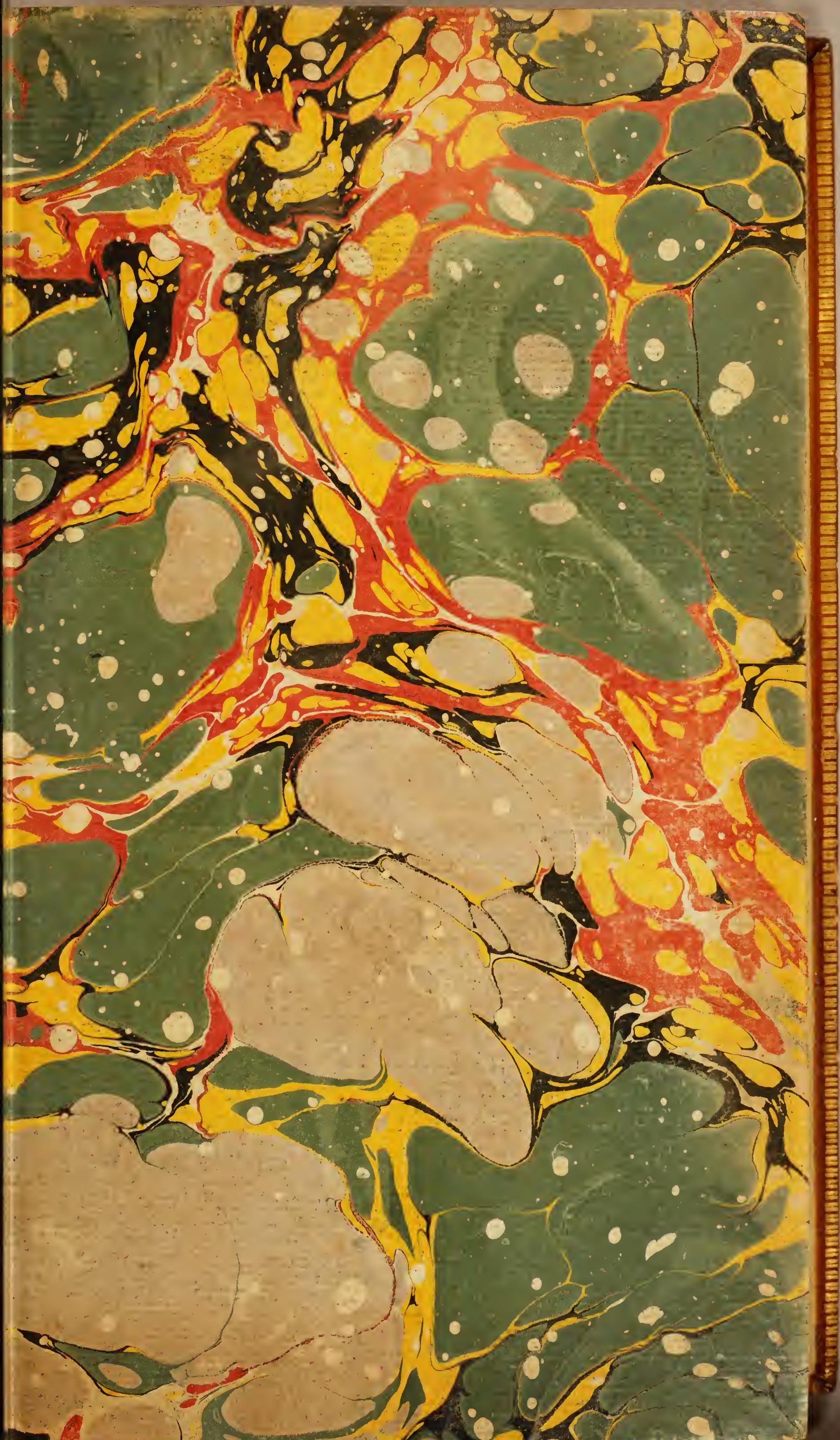


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BROWN
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ESSAY

[By the Pennsylvanian FARMER]

ON THE CONSTITUTIONAL POWER OF
G R E A T - B R I T A I N
OVER THE COLONIES IN
A M E R I C A;
WITH THE
RESOLVES
OF THE
COMMITTEE
FOR THE PROVINCE OF
P E N N S Y L V A N I A,
AND THEIR
INSTRUCTIONS
To their REPRESENTATIVES
IN ASSEMBLY.

PHILADELPHIA

Printed; and London Re-printed for J. ALMON, op-
posite Burlington House, in Piccadilly. 1774.

RPJCS

2503

EXTRACT from the MINUTES of the COMMITTEE.

SATURDAY, JULY 16, [1774.]

THE committee for the [province of *Pennsylvania*] met according to adjournment.

JOHN DICKINSON, Doctor WILLIAM SMITH, JOSEPH READ, JOHN KIDD, ELISHA PRICE, WILLIAM ATLEE, JAMES SMITH, JAMES WILSON, DANIEL BROADHEAD, JOHN OKELY, and WILLIAM SCULL, are appointed to prepare and bring in a draught of instructions.

Monday, July 18 *. The committee appointed to bring in instructions, reported, that they had made a draught, which they laid upon the table.

Moved, That they be read,—which was done.

Tuesday, July 19. Upon a motion made and seconded, agreed, that the draught of instructions brought in by the committee, and which were read, be re-committed to the same committee.

Wednesday, July 20. The committee having brought in a draught of instructions, the same were debated, amended and agreed to.

Thursday, July 21. The instructions were signed by the chairman.—The committee, in a body, waited on the Assembly then sitting, and presented the same.

It having been moved, that the essay of the instructions first proposed to be given to the honourable Assembly of *Pennsylvania*, by the provincial committee

* The committees of the counties having been invited, by the committee for the city and county of *Philadelphia*, to meet them at *Philadelphia* on the 15th of July; this committee thought it their duty, to make some preparation in the business, that was to be laid before the provincial committee by them. On the 4th of July they appointed a committee for this purpose; and this measure enabled those appointed by the provincial committee to bring in a draught so soon.

assembled

assembled at *Philadelphia* the 18th instant might be abridged, leaving out the argumentative part, so as to be more proper for instructions, the same was agreed to; but resolved at the same time, that the whole work ought to be published, as highly deserving the perusal and serious consideration of every friend of liberty within these colonies.

*Agreed unanimously, That the thanks * of this committee be given from the chair to JOHN DICKINSON, Esq; for the great assistance they have derived from the laudable application of his eminent abilities to the service of his country in the above performance.*

Extract from the Minutes,

CHARLES THOMSON, Clerk of the Committee.

* Mr. DICKINSON being absent this day, on account of the funeral of a relation, the next day the chairman, in a very obliging manner, delivered to him from the chair the thanks of the committee; to which he replied:

“ Mr. CHAIRMAN,

“ I heartily thank this respectable Assembly for the honour they have conferred upon me, but want words to express the sense I feel of their kindness. The mere accidents of meeting with particular books, and conversing with particular men, led me into the train of sentiments, which the committee are pleased to think just; and others, with the like opportunities of information would much better have deserved to receive the thanks, they now generously give. I consider the approbation of this company as an evidence, that they entertain a favourable opinion of my good intentions, and as an encouragement for all to apply themselves, in these unhappy times, to the service of the public, since even small endeavours to promote that service, can find a very valuable reward. I will try, during the remainder of my life, to remember my duty to our common country, and, if it be possible, to render myself worthy of the honour for which I now stand so deeply indebted.

“ I thank you, Sir, for the polite and affectionate manner in which you have communicated the sense of the committee to me.”

P R E F A C E.

WHEN the committee for preparing a draught of instructions was appointed, it was considered, whether it would not be proper to form some kind of a sketch, however imperfect it might be, of all the grievances of the colonies, and of course of their constitutional rights.

SUCH an attempt, tho' very rude, might be improved by better hands ; and it seemed absolutely necessary, no longer to confine ourselves to occasional complaints and partial remedies, but, if possible, to attain some degree of certainty concerning our lives, liberties and properties.

IT was perceived, that if the instructions should be formed on this plan, they would comprehend many and very important positions, which it would be proper to introduce, by previously assigning the reasons, on which they were founded. Otherwise, the positions might not appear to the committee to be just. From this consideration it became necessary to render the instructions long and argumentative ; and whoever candidly reflects on the importance of the occasion, will think such a method very justifiable.

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THE draught of instructions being brought into the provincial committee and read, and no objection being made to any of the principles asserted in them, it was not thought necessary, that the argumentative part should continue any longer in them. The committee, that brought in the draught, therefore moved, that this part of the instructions might be separated from the rest. Whereupon the draught was re-committed, for this purpose, to the committee, that brought it in. This was done.

SEVERAL additions have been made to the other part, now called "An Essay," &c. since the vote for publishing. The additions are distinguished by crotchets thus [] and in these it was not thought necessary to observe the stile of instructions. The notes have been almost entirely added since the vote.

AUGUST 1, 1774.

R E S O-



RESOLUTIONS, &c.

*At a provincial meeting of deputies chosen
by the several counties, in Pennsylvania,
held at Philadelphia, July 15, 1774, and
continued by adjournments from day to day.*

P R E S E N T.

For the city and county of Philadelphia.

THOMAS WILLING,	JOSEPH MOULDER,
JOHN DICKINSON,	ANTH. MORRIS, jun.
PETER CHEVALIER,	GEORGE GRAY,
EDW. PENNINGTON,	JOHN NIXON,
THOMAS WHARTON,	JACOB BARGE,
JOHN COX,	THOMAS PENROSE,
JOSEPH REED,	JOHN M. NESBIT,
Tho. WHARTON, jun.	JONATHAN B. SMITH;
SAMUEL ERWIN,	JAMES MEASE,
THOMAS FITZSIMONS,	THOMAS BARCLAY,
Dr. WILLIAM SMITH,	BENJAMIN MARSHALL,
ISAAC HOWELL,	SAMUEL HOWELL,
ADAM HUBLEY,	WILLIAM MOULDER,
GEORGE SCHLOSSER,	JOHN ROBERTS,
SAMUEL MILES,	JOHN BAYARD,
THOMAS MIFFLIN,	WILLIAM RUSH,
CHRISTOPH. LUDWIC,	CHARLES THOMSON.

A

Bucks.

Bucks.

JOHN KIDD,	JOHN WILKINSON,
HENRY WYNKOOP,	JAMES WALLACE.
JOSEPH KIRKBIDE,	

Chester.

FRAN. RICHARDSON,	HUGH LLOYD,
ELISHA PRICE,	JOHN SELLERS,
JOHN HART,	FRANCIS JOHNSON,
ANTHONY WAINE,	RICHARD REILEY.

Lancaster.

GEORGE ROSS,	EMANUEL CARPENTER
JAMES WEBB,	WILLIAM ATLEE,
JOSEPH FERREE,	ALEXANDER LOWRY,
MATTHIAS SLOUGH,	MOSES ERWIN.

York.

JAMES SMITH,	THOMAS HARTLEY.
JOSEPH DONALDSON,	

Cumberland.

JAMES WILSON,	WILLIAM IRVINE.
ROBERT MAGAW,	

Berks.

EDWARD BIDDLE,	THOMAS DUNDAS,
DANIEL BROADHEAD,	CHRISTOPH. SCHULTZ.
JONATHAN POTTS,	

Northampton.

WILLIAM EDMUND'S,	JOHN OKELEY,
PETER KECHLEIN,	JACOB ARNDT.

Northumberland.

WILLIAM SCULL,	SAMUEL HUNTER.
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Bedford.

GEORGE WOODS.	
---------------	--

Westmoreland.

ROBERT HANNAH,	JAMES CAVETT.
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THOMAS

THOMAS WILLING, Chairman.

CHARLES THOMSON, Clerk.

AGREED, that in case of any difference in sentiment, the question be determined by the deputies voting by counties.

THE letters from *Boston* of the 13th of *May* were then read, and a short account given of the steps taken in consequence thereof, and the measures now pursuing in this and the neighbouring provinces; after which the following RESOLVES were passed.

UNAN. I. THAT we acknowledge ourselves, and the inhabitants of this province, liege subjects of his majesty king *George the Third*, to whom they and we owe and will bear true and faithful allegiance.

UNAN. II. That as the idea of an unconstitutional independence on the parent state is utterly abhorrent to our principles, we owe the unhappy differences between *Great Britain* and the Colonies with the deepest distress and anxiety of mind, as fruitless to her, grievous to us, and destructive of the best interests of both.

UNAN. III. That it is therefore our ardent desire, that our ancient harmony with the mother country should be restored, and a perpetual love and union subsist between us, on the principles of the constitution, and an interchange of good offices, without the least infraction of our mutual rights.

UNAN. IV. That the inhabitants of these colonies are entitled to the same rights and liberties **WITHIN** these colonies, that the subjects born in *England* are entitled to **WITHIN** that realm.

UNAN. V. That the power assumed by the parliament of *Great Britain* to bind the people of these colonies, “**by statutes IN ALL CASES WHATSOEVER,**” is unconstitutional; and therefore the source of these unhappy differences.

UNAN. VI. That the act of parliament, for shutting up the port of *Boston*, is unconstitutional; oppressive to the inhabitants of that town; dangerous to the liberties of the *British* colonies; and therefore, that we consider our brethren at *Boston* as suffering in the common cause of these colonies.

UNAN. VII. That the bill for altering the administration of justice in certain criminal

minal cases within the province of *Massachusetts Bay*, if passed into an act of parliament, will be as unconstitutional, oppressive and dangerous, as the act above-mentioned.

UNAN. VIII. That the bill for changing the constitution of the province of *Massachusetts Bay*, established by charter, and enjoyed since the grant of that charter, if passed into an act of parliament, will be unconstitutional and dangerous in its consequences to the *American* colonies.

UNAN. IX. That there is an absolute necessity, that a congress of deputies from the several colonies be immediately assembled, to consult together, and form a general plan of conduct to be observed by all the colonies, for the purposes of procuring relief for our suffering brethren, obtaining redress of our grievances, preventing future dissensions, firmly establishing our rights, and restoring harmony between *Great Britain* and her colonies on a constitutional foundation.

UNAN. X. That, although a suspension of the commerce of this large trading province, with *Great Britain*, would greatly distress multitudes of our industrious inhabitants,

habitants, yet that sacrifice and a much greater we are ready to offer for the preservation of our liberties; but, in tenderness to the people of *Great Britain*, as well as of this country, and in hopes that our just remonstrances will, at length, reach the ears of our gracious sovereign, and be no longer treated with contempt by any of our fellow subjects in *England*, it is our earnest desire, that the congress should first try the gentler mode of stating our grievances, and making a firm and decent claim of redress.

XI. RESOLVED, by a great majority, That yet notwithstanding, as an unanimity of counsels and measures is indispensably necessary for the common welfare, if the congress shall judge agreements of non-importation and non-exportation expedient, the people of this province will join with the other principal and neighbouring colonies, in such an association of non-importation from and non-exportation to *Great Britain* as shall be agreed on, at the congress.

XII. RESOLVED, by a majority, That if any proceedings of the parliament, of which notice shall be received, on this continent, before or at the general congress, shall render

der it necessary in the opinion of that congress, for the colonies to take farther steps than are mentioned in the *eleventh* resolve; in such case, the inhabitants of this province shall adopt such farther steps, and do all in their power to carry them into execution.

UNAN. XIII. That the venders of merchandize of every kind, within this province, ought not to take advantage of the resolves relating to non-importation in this province or elsewhere; but that they ought to sell their merchandize, which they now have, or may hereafter import, at the same rates they have been accustomed to do within three months last past.

UNAN. XIV. That the people of this province will break off all trade, commerce, and dealing, and will have no trade, commerce, or dealing of any kind with any colony on this continent, or with any city or town in such colony, or with any individual in any such colony, city, or town, which shall refuse, decline, or neglect to adopt, and carry into execution such general plan as shall be agreed to in congress.

UNAN. XV. That it is the duty of every member of this committee to promote, as much as he can, the subscription
set

[8.]

set on foot, in the several counties of this province, for the relief of the distressed inhabitants of *Boston*.

UNAN. XVI. That this committee give instructions on the present situation of public affairs to their representatives, who are to meet next week in Assembly, and request them to appoint a proper number of persons to attend a congress of deputies from the several colonies, at such time and place as may be agreed on, to effect one general plan of conduct, for attaining the great and important ends mentioned in the ninth resolve.



INSTRUCTIONS

INSTRUCTIONS

From the COMMITTEE to the REPRESENTATIVES in ASSEMBLY met.

GENTLEMEN,

THE dissensions between *Great Britain* and her colonies on this continent, commencing about ten years ago, since continually encreasing, and at length grown to such an excess as to involve the latter in deep distress and danger, have excited the good people of this province to take into their serious consideration the present situation of public affairs.

The inhabitants of the several counties qualified to vote at elections, being assembled on due notice, have appointed us their deputies; and in consequence thereof, we being in provincial committee met, esteem it our indispensible duty, in pursuance of the trust reposed in us, to give you such instructions, as, at this important period, appear to us to be proper.

We, speaking in their names and our own, acknowledge ourselves liege subjects of his majesty king *George the third*, to whom "we will be faithful and bear true allegiance."

Our judgments and affections attach us, with inviolable loyalty, to his majesty's person, family and government.

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•We

We acknowledge the prerogatives of the sovereign, among which are included the great powers of making peace and war, treaties, leagues and alliances *binding us*—of appointing all officers, except in cases where other provision is made, by grants from the crown, or laws approved by the crown—of confirming or annulling every act of our assembly within the allowed time—and of hearing and determining finally, in council, appeals from our courts of justice. “The prerogatives are limited,” *as a learned judge observes, “by bounds so certain and notorious, that it is impossible to exceed them, without the consent of the people on the one hand, or without, on the other, a violation of that original contract†, which, in all states impliedly,

* I *Blackstone*, 237.

† And though we are strangers to the original of most states, yet we must not imagine that what has been here said, concerning the manner in which civil societies are formed, is an arbitrary fiction. For since it is certain, that all civil societies had a beginning, it is impossible to conceive, how the members, of which they are composed, could unite to live together dependent on a supreme authority, without supposing the covenants abovementioned.

BURLEMAQUI’s *Princ. of pol. law*, vol. 2. p. 29.

And in fact, upon considering the primitive state of man, it appears most certain, that the appellations of sovereigns and subjects, masters and slaves, are unknown to nature. Nature has made us all of the same species, all equal, all free and independent of each other; and was willing that those, on whom she has

pliedly, and in ours most expressly, subsists between the prince and subject.—For these prerogatives are vested in the crown *for the support of society*, and do not in-

B 2 trench

has bestowed the same faculties, should have all the same rights. It is therefore beyond all doubt that in this primitive state of nature, no man has of himself an original right of commanding others, or any title to sovereignty.

There is none but God alone that has of himself, and in consequence of his nature and perfections, a natural, essential, and inherent right of giving laws to mankind, and of exercising an absolute sovereignty over them. The case is otherwise between man and man; they are of their own nature as independent of one another, as they are dependent on God. This liberty and independence is therefore a right naturally belonging to man, of which it would be unjust to deprive him against his will. *Id. p. 38.*

There is a beautiful passage of Cicero's to this purpose*. *Nothing is more agreeable to the supreme Deity, that governs this universe, than civil societies lawfully established.*

When therefore we give to sovereigns the title of God's vicegerents upon earth, this does not imply that they derive their authority immediately from God, but it signifies only, that by means of the power lodged in their hands, and with which the people have invested them, they maintain, agreeable to the views of the Deity, both order and peace, and thus procure the happiness of mankind. *Id. p. 40.*

But it will be here objected, that the scripture itself says, that every man ought to be subject to the supreme powers, because they are established by God†.

* *Nihil est illi principi Deo, qui omnem hunc mundum regit, quod quidem in terris fiat acceptius, quam confilia cœtusque hominum jure sociati, quæ civitates appellantur.* *Somn. Scip. c. 3.*

† *Rom. xiii.*

I answer,

trench any farther on our *natural liberties*, than is expedient for the maintenance of our *civil*,”

But it is our misfortune, that we are compelled loudly to call your attention to the consideration of another power, totally different in kind—limited, as it is alledged, by no “bounds,” and * “wearing a most dreadful aspect,” with regard to *America*. We mean the power claimed by parliament, of right, to bind the people of these colonies by statutes, “IN ALL

I answer, with *Grotius*, that men have established civil societies, not in consequence of a divine ordinance, but of their voluntary motion, induced to it by the experience they had had of the incapacity which separate families were under, of defending themselves against the insults and attacks of human violence. From thence (he adds) arises the civil power, which *St. Peter*, for this reason, calls *a human power* *, tho’ in other parts of scripture it bears the name of a divine institution†, because God has approved of it as an establishment useful to mankind ‡.

All the other arguments, in favour of the opinion we have been here refuting, do not even deserve our notice. In general, it may be observed, that never were more wretched reasons produced than upon this subject, as the reader may be easily convinced by reading *Puffendorf* on the law of nature and nations, who, in the chapter corresponding to this, gives these arguments at length, and compleatly refutes them §.

Id. p. 42, 43.

* I *Blackstone* 270.

* I Ep. c. 2. v. 13.

+ Rom. xiii. 1.

† Grotius of the right of war & peace, b. I. c. 4. § 7, 12. No. 5.

§ See the law of nature and nations, book VII. c. 3.

CASES

CASES WHATSOEVER"—a power, as we are not, and from local circumstances, cannot be represented there, utterly subversive of our natural and civil liberties—past events and reason convincing us, that there never existed, and never can exist, a state *thus* subordinate to another, and yet retaining the slightest portion of freedom or happiness.

The import of the words above quoted needs no descant; for the wit of man, as we apprehend, cannot possibly form a more clear, concise, and comprehensive definition and sentence of slavery, than these expressions contain.

This power claimed by *Great Britain*, and the late attempts to exercise it over these colonies, present to our view two events, one of which must *inevitably* take place, if she shall continue to insist on her pretensions. Either, the colonists will sink from the rank of freemen into the class of slaves, overwhelmed with all the miseries and vices, proved by the history of mankind to be inseparably annexed to that deplorable condition: Or, if they have sense and virtue enough to exert themselves in striving to avoid this perdition, they must be involved in an opposition dreadful even in contemplation.

Honour, justice, and humanity call upon us to hold, and to transmit to our posterity,

rity, that liberty, which we received from our ancestors. It is not our duty to leave wealth to our children: But it is our duty to leave liberty to them. No infamy, iniquity, or cruelty, can exceed our own, if we, born and educated in a country of freedom, entitled to its blessings, and knowing their value, pusillanimously deserting the post assigned us by divine Providence, surrender succeeding generations to a condition of wretchedness, from which no human efforts, in all probability, will be sufficient to extricate them; the experience of all states mournfully demonstrating to us, that when arbitrary power has been established over them, even the wisest and bravest nations, that ever flourished, have, in a few years, degenerated into abject and wretched vassals.

So alarming are the measures already taken for laying the foundations of a despotic authority of *Great Britain* over us, and with such artful and incessant vigilance is the plan prosecuted, that unless the present generation can interrupt the work, *while it is going forward*, can it be imagined, that our children, debilitated by our imprudence and supineness, will be able to overthrow it, *when compleated?* Populous and powerful as these Colonies may grow, they will still find arbitrary domination not only strengthening with their

their strength, but exceeding, in the swiftness of its progression, as it ever has done, all the artless advantages that can accrue to the governed. *These* advance with a regularity, which the divine author of our existence has impressed on the laudable pursuits of his creatures: But despotism*, unchecked and unbounded by *any laws*—never satisfied with what has been done, while any thing remains to be done, for the accomplishment of its purposes—con-

* As virtue is necessary in a republic, and in a monarchy honour, so fear is necessary in a despotic government: with regard to virtue, there is no occasion for it, and honour would be extremely dangerous.

Here the immense power of the prince is devolved entirely upon those to whom he is pleased to entrust it. Persons capable of setting a value upon themselves would be likely to create revolutions. Fear must therefore depress their spirits, and extinguish even the least sense of ambition.

MONT. *Spir. of Laws*, vol. I. b. III. ch. 9.

An idea of despotic power.

When the savages of Louisiana are desirous of fruit, they cut the tree to the root, and gather the fruit*. This is an emblem of despotic government. *Id. book V. c. 13.*

The principle of despotic government is fear; but a timid, ignorant, and faint spirited people have no occasion for a great number of laws.

Every thing ought to depend here on TWO OR THREE ideas; therefore there is no necessity that any new notions should be added. When we want to break a horse, we take care not to let him change his master, his lesson, or his pace. Thus an impression is made on his brain by two or three motions, and no more.

Id. book V. ch. 14.

* Edifying letters, 11 coll. p. 315.

fiding,

fiding, and capable of confiding, only *in the annihilation of all opposition*,—holds its course with such unabating and destructive rapidity, that the world has become its prey, and at this day, *Great Britain* and her dominions excepted, there is scarce a spot on the globe inhabited by civilized nations, where the vestiges of freedom are to be observed.

To us therefore it appears, at this alarming period, our duty to God, to our country, to ourselves, and to our posterity, to exert our utmost ability, in promoting and establishing harmony between *Great Britain* and these colonies, ON A CONSTITUTIONAL FOUNDATION.

For attaining this great and desirable end, we request you to appoint a proper number of persons to attend a congress of deputies from the several colonies, appointed, or to be appointed, by the representatives of the people of the colonies respectively in assembly, or convention, or by delegates chosen by the counties generally in the respective colonies, and met in provincial committee, at such time and place as shall be generally agreed on: And that the deputies from this province may be induced and encouraged to concur in such measures as may be devised for the common welfare, we think it proper, particularly to inform you, how far, we apprehend, they will be supported in their conduct by their constituents. [In

[In this place was inserted the argumentative part, which in this publication is called "An Essay."]

The assumed parliamentary power of internal legislation, and the power of regulating trade, as of late exercised, and designed to be exercised, we are thoroughly convinced, will prove unfailing and plentiful sources of dissentions to our mother country and these colonies, unless some expedients can be adopted to render her secure of receiving from us every emolument, that can in justice and reason be expected, and us secure in our lives, properties, and an equitable share of commerce.

Mournfully revolving in our minds the calamities, that, arising from these dissensions, will most probably fall on us and our children, we will now lay before you the particular points we request of you to procure, if possible, to be finally decided; and the measures that appear to us most likely to produce such a desirable period of our distresses and dangers. We therefore desire of you—

First. That the deputies you appoint, may be instructed by you strenuously to exert themselves, at the ensuing Congress, to obtain a renunciation, on the part of Great Britain, of all powers under the statute of the 35th of Henry the Eighth, chapter the second.—of all powers of in-

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ternal legislation—of imposing taxes or duties internal or external—and of regulating trade, except with respect to any new articles of commerce, which the Colonies may hereafter raise, as silk, wine, &c. reserving a right to carry these from one colony to another—a repeal of all statutes for quartering troops in the Colonies, or subjecting them to any expence on account of such troops—of all statutes imposing duties to be paid in the Colonies, that were passed at the accession of his present majesty, or before this time; which ever period shall be judged most adviseable—of the statutes giving the courts of admiralty in the colonies greater power than courts of admiralty have in *England*—of the statutes of the 5th of George the Second, chapter the 22d, and of the 23d of George the Second, chapter the 29th—of the statute for shutting up the port of Boston—and of every other statute particularly affecting the province of *Massachusetts Bay*, passed in the last session of parliament.

In case of obtaining these terms, it is our opinion, that it will be reasonable for the colonies to engage their obedience to the acts of parliament, commonly called the acts of navigation, and to every other act of parliament declared to have force, at this time, in these colonies, other than those

those above-mentioned, and to confirm such statutes by acts of the several assemblies. It is also our opinion, that taking example from our mother country, in abolishing the “courts of wards and liveries, tenures in capite, and by knight’s service, and purveyance,” it will be reasonable for the colonies, in case of obtaining the terms before-mentioned, to settle a certain annual revenue on his majesty, his heirs and successors, subject to the controul of parliament, and to satisfy all damages done to the *East India company.*

This our idea of settling a revenue, arises from a sense of duty to our sovereign, and of esteem for our mother country. We know and have felt the benefits of a subordinate connexion with her. We neither are so stupid as to be ignorant of them; nor so unjust as to deny them. We have also experienced the pleasures of gratitude and love, as well as advantages from that connexion. The impressions are not yet erased. We consider her circumstances with tender concern. We have not been wanting, when constitutionally called upon, to assist her to the utmost of our abilities; insomuch that she has judged it reasonable to make us recompences for our overstrained exertions: and we now think

we ought to contribute more than we do, to the alleviation of her burthens.

Whatever may be said of these proposals, on either side of the *Atlantic*, this is not a time, either for timidity or rashness. We perfectly know, that the great cause now agitated, is to be conducted to a happy conclusion, only by that well tempered composition of counsels, which firmness, prudence, loyalty to our Sovereign, respect to our parent State, and affection to our native country, united, must form.

By such a compact, *Great Britain* will secure every benefit, that the parliamentary wisdom of ages has thought proper to attach to her. *From her alone* we shall continue to receive manufactures. *To her alone* we shall continue to carry the vast multitude of enumerated articles of commerce, the exportation of which her policy has thought fit to confine to herself. *With such parts of the world only*, as she has appointed us to deal, we shall continue to deal; and *such commodities only*, as she has permitted us to bring from them, we shall continue to bring. The *executive* and *controlling* powers of the crown will retain their present full force and operation. We shall contentedly labour for her as affectionate friends, in time of tranquility;

quility; and cheerfully spend for her, as dutiful *children*, our treasure and our blood, in time of war. She will receive a *certain income* * from us, without the trouble or expence

* The train of Officers, employed by *Great Britain*, consume a very large part of what she takes from us. She therefore increases our distresses to make up for that consumption. They will hereafter grow more and more oppressive, we more and more uneasy, she more and more disturbed. We could raise the same sum in a much more *easy, equal, and cheap* manner, than she can do. The attention of small states extends much more efficaciously and beneficially to every part of the territories, than that of the administration of a vast empire. The representatives in assembly, WHO ARE TAXED, WHEN THE PEOPLE ARE TAXED, AND ACCOUNTABLE TO THEM, will have double motives to take care, that the *raising* and *expending* money is managed in the best way. The House of Commons would not bear to examine *every particular* relating to the just taxation of *every county* on this continent, and to *settle all the accounts fairly*. If they could go through the immense labour, it would be impossible for them to do any other business. In short, by not doing it, they would be *unjust*; by doing it they would be *useless*. Equity and reason demonstrate that such a power belongs not to them. We have had some remarkable instances on this continent some few years ago, of the crown being *according to all the forms of business* charged with articles, that never went to the use of the crown. These were *perquisites*, and who could be so puritanical as to blame the civil word. It is said, our barracks cost about £8000 of this money—and that the barracks at *another place*, not deserving a comparison with ours, cost £40,000 sterling. We built our own, *ourselves*, and were as saving and careful as we could be, it

expence of collecting it—without being constantly disturbed by complaints of grievances, which she cannot justify, and will not redress. In case of war, or in any emergency of distress to her, we shall also be

it may be supposed. If money is raised upon us by parliament ; of one thousand pounds, taken out of our pockets, not one hundred, in all probability, will be usefully applied to the service of the crown. Deficiencies will ensue—they must be supplied—other acts are made—still others—till our* “unrepresented blades of grass,” too frequently and closely cut down and exposed to the burning heat of an unsetting Sun, ever “in its meridian,” perish to their deepest roots.

“ There is not upon earth (says the excellent *Gordon*) a nation, which having had *unaccountable* magistrates, has not felt them to be crying and consuming mischiefs. In truth, where they are most limited, it has been often as much as a whole people could do to restrain them to their trust, and to keep them from violence ; and such frequently has been their propensity to be lawless, that nothing but a violent death could cure them of their violence. This evil has its root in human nature ; men will never think they have enough, whilst they can take more ; nor be content with a part, when they can seize the whole †.”

“ That the business of most kingdoms has been ill managed, proceeds from this ; it imports the lower rank of men only, and the people (whose cries seldom reach the prince, till it is too late, and till all is past remedy) that matters should be frugally ordered, because taxes must arise from their sweat and labour. But the great ones, who heretofore have had the prince’s ear and favour, or who hoped to have

* Speech of Lord Camden.

† CATO’S LETT. III. 73.

1 Blackstone 270.

be ready and willing to contribute all aids within our power: and we solemnly declare, that on such occasions, if we or our posterity shall refuse, neglect or decline thus

to

" have him in their possession, were swayed by another sort of interest; they like profusion, as having had a prospect to be gainers by it, they can easily set their account even with the state; a small charge upon their land is more than balanced by a great place, or a large pension*."

See the lord-keeper *North's* account of abuses in the conduct and *disposal* of the publick money in the time of king *Ch. II* †. Those who, in our times, are the conductors of the same kind of dirty work, may compare the modern ingenious ways and means with those of their worthy predecessors.

Among others, pretended want of money in the treasury, in order to have a pretence for giving an exorbitant price for necessaries. Lending the crown at 8 per cent. money which was raised at 5 and 6. Paying with the public money, pretending it to be private, and taking interest. Depreciating the public debts and funds, buying them of the holders at half their worth, and afterwards by interest getting them paid in full. Pretending to give up all power in recommending to places for a consideration, and then insisting on recommending still, and so getting both ways. Rolling over losses upon the crown, or public, while the gain was to sink into private pockets. A father stopping a large sum in his own hand, which was to have been paid the public creditors. Before he can be brought to account he dies. The money sinks into the pocket of his heir. He obtains a pardon of all his father's debts. Gross frauds in office found out. Then new officers and salaries set up as checks. The new prove as great knaves as the old,

and

* *Daven.* 11, 262. † *Dalrymp.* *MEM.* 11, 84.

to contribute, it will be a mean and manifest violation of a plain duty, and a weak and wicked desertion of the true interests of this province, which ever have been and

and form a scheme of collusion and mutual understanding. But the public pays for all, and the power of the court is strengthened. An old placeman begs leave to sell. Pockets the money, and by and by, through interest, gets a new place *gratis*. Extravagant men squander their own money in their public employments of ambassadors, governors, &c. and charge the public with more than they have really spent, while what they really spent was ten times more than necessary. The business of old offices transferred to new: but the profits of the old still kept up, though become sinecures. An old servant of the public retires upon a pension. He who succeeds him, by interest, gets it continued to him. Another gets an addition to his salary, and then sells his place for a great deal more than it cost him, and so an additional load is laid on the public: for the addition must be continued, because the place was bought. An annual sum is granted by the public for a public use, as keeping up a harbour, or the like. A private man, by interest, gets a grant of the jobb; the public concern is neglected, and the public pocket picked. Crown lands perpetually begged and given away to strengthen the court interest. The crown constantly kept in debt, and parliament solicited to pay those debts occasioned merely by the voracity of the court. Commanders of fleets order a superfluous quantity of stores. By collusion between them and the store-masters, this superfluous quantity is sold again to the king, and the money sunk in their pockets. Sometimes the store-masters gave receipts for more than was received into the king's stores, and the money

and must be bound up in the prosperity of our mother country. Our union, founded on mutual compacts and mutual benefits, will be indissoluble, at least more firm, than an union perpetually disturbed by disputed rights and retorted injuries.

D SECONDLY.

ney was divided among the plunderers. The king's works done by the day, whereas it would have been cheaper by the great. Money pretended to be coined *gratis*. Lists of large sums newly coined produced. But the contrivance was to make the pieces unequal, and then the too heavy pieces were carried back to the mint, and the profit sunk in private pockets, &c.

Secret service is a huge cloak thrown over an immense scene of corruption; and under this cloak we must not peep. Our court-men tell us, there must be large sums expended in this way, and those sums cannot be accounted for; because the *services* done by them must never be known. But we find, that the commons, A. D. 1708, addressed queen Anne for accounts of pensions paid for *secret service* to members of parliament, or to any persons in trust for them; and that 'the queen ordered said account to be laid before
the house*.

Contracts are a great fund of ministerial influence. It is well known, that our ministry do not accept the most *reasonable* offer; but the offer which is made by those who have the greatest *parliamentary interest*; and that in war time, every man who *furnishes* for the *government*, is *enriched*; in *France*, the contrary; which shews, that we manage our public money much *worse* than the *French* ministry do theirs. In the late war it is notorious, that several of our *purveyors* and *commissaries* got estates sufficient to set them up for earls and dukes. But as *Burnet* † says, 'the regard that

* Deb. Com. iv. 119. † Hist. own Times, iii. 279.

SECONDLY. If all the terms above-mentioned cannot be obtained, it is our opinion, that the measures adopted by the congress for our relief should never be relinquished or intermitted, until those relating to the troops—internal legislation,—imposition of taxes or duties hereafter—the 35th of *Henry the 8th*, chapter the
 ‘ is shewn to members of parliament among us, causes
 ‘ that few abuses can be inquired into, or discovered.’

POL. DISQ. b. v. p. 274—277.

What redress could a poor plundered, unrepresented colony obtain against a *Verres*, supported by a strong parliamentary influence. We know what several governors of *Minorca* have dared to do. A governor of *Gibraltar* has ventured to oppress even the garrison of that important place. The very drudgery of examining accounts would probably secure him. If cast, the injuries could not be recompensed. A successor might prove as bad—“*Victrix provincia plorat.*”

It has been said in *Great Britain*, that Lord *Chatham*, Lord *Camden*, and some other great men, have taught the colonies to despise her authority. But it is as little true as the multitude of invectives vented against the colonies. The constant practice in these publications, is to confound facts and dates, and then to rail. It should be remembered, that the opposition in *America* to the stamp act was fully formed, and the congress held at *New York*, before it was known on this continent, that our cause was espoused by any man of note at home. We should be glad to count such venerable names in the list of our friends. They are the true friends of our mother country, as well as of this; and ages unborn will bless their memory. But if every man in *Great Britain* is carried by the stream of prejudices into sentiments hostile to our freedom, that freedom will not be the less esteemed, or the sooner relinquished by *Americans*.

2d—the extension of admiralty courts—the port of *Boston* and the province of *Massachusetts Bay* are obtained. Every modification or qualification of *these* points, in our judgment, should be inadmissible. To obtain them, we think it may be prudent to settle some revenue as above-mentioned, and to satisfy the *East India* company.

THIRDLY. If neither of these plans should be agreed to, in congress, but some other of a similar nature shall be framed, though on the terms of a revenue, and satisfaction to the *East India* company, and though it shall be agreed by the congress to admit no modification or qualification in the terms they shall insist on, we desire your deputies may be instructed to concur with the other deputies in it; and we will accede to, and carry it into execution as far as we can.

FOURTHLY. As to the regulation of trade—we are of opinion, that by making some few amendments, the commerce of the colonies might be settled on a firm establishment, advantageous to *Great Britain* and them, requiring and subject to no future alterations, without mutual consent. We desire to have this point considered by the congress; and such measures taken, as they may judge proper.

IN order to obtain redress of our common grievances, we observe a general in-

D 2 clination

clination among the colonies of entering into agreements of non-importation and non-exportation. We are fully convinced that such agreements would withhold very large supplies from *Great Britain*; and no words can describe our contempt and abhorrence of those colonists, if any such there are, who, from a sordid and ill-judged attachment to their own immediate profit, would pursue that, to the injury of their country, in this great struggle for all the blessings of liberty. It would appear to us a most wasteful frugality, that would lose every important possession by too strict an attention to small things, and lose also even these at the last. For our part, we will cheerfully make any sacrifice, when necessary, to preserve the freedom of our country. But other considerations have weight with us. We wish every mark of respect to be paid to his majesty's administration. We have been taught from our youth to entertain tender and brotherly affections for our fellow subjects at home. The interruption of our commerce must distress great numbers of them. This we earnestly desire to avoid. We therefore request, that the deputies you shall appoint may be instructed to exert themselves at the congress, to induce the members of it to consent to make a full and precise state of grievances, and a decent yet firm claim

of redress, and to wait the event, before any other step is taken. It is our opinion, that persons should be appointed and sent home to present this state and claim, at the court of *Great Britain*.

If the congress should chuse to form agreements of non-importation and non-exportation immediately, we desire the deputies from this province will endeavour to have them so formed as to be binding upon all, and that they may be PERMANENT, should the public interest require it. They cannot be *efficacious*, unless they can be *permanent*; and it appears to us that there will be a danger of their being infringed, if they are not formed with great caution and deliberation. We have determined in the present situation of public affairs to consent to a stoppage of our commerce with *Great Britain* only; but in case any proceedings of the parliament, of which notice shall be received on this continent, before or at the congress, shall render it necessary, in the opinion of the congress, to take further steps, the inhabitants of this province will adopt such steps, and do all in their power to carry them into execution.

This extensive power we commit to the congress, for the sake of preserving that unanimity of counsel and conduct, that alone can work out the salvation of these colonies,

colonies, with a strong hope and trust, that they will not draw this province into any measure judged by us, who must be better acquainted with its state than strangers, highly inexpedient. Of this kind, we know any other stoppage of trade, but of that with *Great Britain*, will be. Even this step we should be extremely afflicted to see taken by the congress, before the other mode above pointed out is tried. But should it be taken, we apprehend, that a plan of restrictions may be so framed, agreeable to the respective circumstances of the several colonies, as to render *Great Britain* sensible of the imprudence of her counsels, and yet leave them a necessary commerce. And here it may not be improper to take notice, that if redress of our grievances cannot be wholly obtained, the extent or continuance of our restrictions may, in some sort, be proportioned to the rights we are contending for, and the degree of relief afforded us. This mode will render our *opposition* as *perpetual* as our *oppression*, and will be A CONTINUAL CLAIM AND ASSERTION OF OUR RIGHTS. We cannot express the anxiety, with which we wish the consideration of these points to be recommended to you. We are persuaded, that if these colonies fail of unanimity or prudence in forming their resolutions, or of fidelity in observing them,

them, the opposition by non-importation and non-exportation agreements will be ineffectual; and then we shall have only the alternative of a more dangerous contention, or of a tame submission.

Upon the whole, we shall repose the highest confidence in the wisdom and integrity of the ensuing congress: And though we have, for the satisfaction of the good people of this province, who have chosen us for this express purpose, offered to you such instructions, as have appeared expedient to us, yet it is not our meaning, that by these, or by any you may think proper to give them, the deputies appointed by you should be restrained from agreeing to any measures that shall be approved by the congress. We should be glad the deputies chosen by you could, by their influence, procure our opinions hereby communicated to you to be as nearly adhered to as may be possible: But to avoid difficulties, we desire that they may be instructed by you, to agree to any measures that shall be approved by the congress, the inhabitants of this province having resolved to adopt and carry them into execution.—Lastly—We desire the deputies from this province, may endeavour to procure an adjournment of the congress to such a day as they shall judge proper,

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proper, and the appointment of a standing committee.

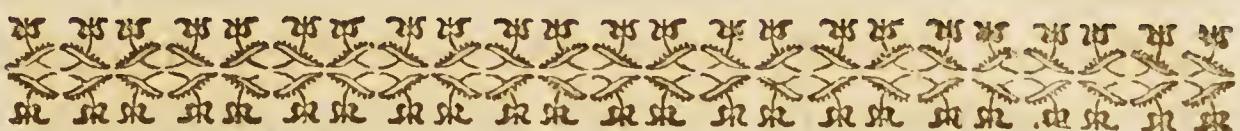
Agreed, that *John Dickinson, Joseph Read, and Charles Thomson*, be a committee to write to the neighbouring colonies, and communicate to them the resolves and instructions.

Agreed, that the committee for the city and county of *Philadelphia*, or any fifteen of them, be a committee of correspondence for the general committee of this province.

Extract from the Minutes.

CHARLES THOMSON, Cl. Com.

A N



A N

E S S A Y*, &c.

THE authority of parliament has within these few years been a question much agitated; and great difficulty, we understand, has occurred, in tracing the line between the rights of the mother country and those of the colonies. The modern doctrine of the former is indeed truly remarkable; for though it points out, what *are not* our rights, yet we can never learn from it, what *are* our rights. As for example—*Great Britain* claims a right to take away nine-tenths of our estates—have we a *right* to the remaining tenth?

E No.

* This piece has been written in such haste, under so great indisposition, and amidst such a confusion of public affairs, that it is hoped, its inaccuracies will be looked upon with indulgence. If longer time could have been bestowed upon its correction, it would have been at least shorter, if not more exact. The first appointment of a committee to form a draught of instructions, was made on the fourth of last month. See note on the extract, dated the 18th of July.

No.—To say we have, is a “ traiterous” position, denying her supreme legislature. So far from *having property*, according to these late found novels, *we are ourselves a property.*

We pretend not to any considerable share of learning; but, thanks be to Divine Goodness, common sense, experience, and some acquaintance with the constitution, teach us a few salutary truths on this important subject.

WHATEVER difficulty may occur in tracing the line, yet we contend, that by the laws of God, and by the laws of the constitution, a line there must be, beyond which her authority cannot extend. For all these laws are* “grounded on reason, full of justice†, and true

* *Parlt. Deb.* 7. 409. “What of that? Shall not we give judgment, because it is not adjudged in the books before? We will give judgment ACCORDING TO REASON, and if there be no reason in the books, I will not regard them.”

Speech of *Anderson*, Lord chief justice of the queen’s bench, in the reign of *Elizabeth*. GOULDSB. REP. 96. edit. 1653.

† “It seems to me, that the *natural justice*, which is a duty of man, ought to be styled the *parent, and nourisher, of every other virtue*: and assuredly, without this habit, a man can neither moderate his desires, nor be brave, nor wise. For, it is a *harmony, and peace, of the whole soul*; with a full concert of words, and actions: And the dominion of such a habit may be rendered more con-

“true equity,” mild, and calculated to promote the freedom and welfare of men. These objects never can be attained by abolishing every restriction, on the part of the governors, and extinguishing every right, on the part of the governed.

SUPPOSE it be allowed, that the line is not *expressly drawn*, is it thence to be concluded, there is no *implied* line? No English lawyer, we presume, will venture to make the bold assertion. “The King may reject what bills, may make what treaties, may coin what
 E 2 money,

spicuous, if we examine the other habits of virtue. For the good of these is private, respecting the individual; but the good of *natural justice* respects whole systems, and throughout the universe.”—

In the *celestial system* of the world, as it marshals out the universal rule of things, which are thus decreed by God; it is *providence*, and *harmony*, and *right*. In a *civil state*, it is justly called *peace*, and *good order*. In a *domestic state*, it is the *like mindedness* of husband, and wife, towards each other; the *good will* of subordinate members. In the *body*, it is *health*, and *symmetry* of parts; which are principal things, and much beloved by every living creature. In the *soul*, it is *wisdom*; that wisdom which arises amongst men, from the *knowledge of causes*, and from *natural justice*.

Since therefore, this habit doth thus instruct, and preserve, the whole and every part; rendering all the same, in heart, and in tongue, why may it not be saluted, by the universal voice; THE PARENT AND NOURISHER OF EVERY VIRTUE?”

POL. PYTH. LUC. apud STOBÆUM, pa. 105. edit. Tiguri, 1559.

money, may create what peers, and may pardon what offences, HE PLEASES *." But is his prerogative respecting these branches of it, unlimited? By no means. The words following those next above quoted from the "Commentaries on the Laws of *England*," are—"unless where the constitution hath *expressly*, or *by evident consequence*, laid down some *exception* or *boundary*; *declaring*, that thus far the prerogative shall go, and no farther." There are "some boundaries" then, besides the "express exceptions;" and according to the strong expression here used, "the constitution *DECLARES* there are." What "*evident consequence*" forms those "*boundaries*?"

The happiness of the people is the end, and, if the term is allowable, we would call it the body of the constitution. Freedom is the spirit or soul. As the soul, speaking of nature, has a right to prevent or relieve, if it can, any mischief to the body of the individual, and to keep it in the best health; so the soul, speaking of the constitution, has a right to prevent, or relieve, any mischief to the body of the society, and to keep that in the best health. The "*evident consequence*" mentioned, must mean a tendency to injure this health, that is to diminish the happiness of the people—or it must mean nothing. If,

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* I BLACKST. COM. 250.

therefore, the constitution “ DECLARES *by evident consequence* ;” that a tendency to diminish the happiness of the people, is a proof, that power exceeds a “ boundary,” beyond which it ought not to “ go ;” the matter is brought to this single point, whether taking our money from us without our consent, depriving us of trial by jury, changing constitutions of government, and abolishing the privilege of the writ of *habeas corpus*, by seizing and carrying * us to *England*, have not a greater tendency to diminish our happiness, than any enormities a King can commit under pretence of prerogative, can have to diminish

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* “ Of great importance to the public is the preservation of this personal liberty : for if once it were left in the power of any, the highest magistrate, to imprison arbitrarily, whomever he or his officers thought proper, (as in *France* it is daily practised by the crown) THERE WOULD SOON BE AN END OF ALL OTHER RIGHTS AND IMMUNITIES.”—“ A natural and regular consequence of this personal liberty is, that every *Englishman* may claim A RIGHT TO ABIDE IN HIS OWN COUNTRY SO LONG AS HE PLEASES, and not to be driven from it unless by the sentence of law. Exile or transportation is a punishment *unknown to the common law.*” “ The king cannot constitute a man lord lieutenant of *Ireland* against his will, nor make him a foreign ambassador. For this might in reality be no more than an honourable exile.” I BLACKSTONE 135 to 138.

“ These precedents collected by the reverend and learned judge, chief justice Anderson and all written with his own hand, do fully resolve for the maintenance of the *ancient* and *fundamental* point of LIBERTY OF THE PERSON, to be regained by *Habeas Corpus*, when any one is imprisoned.” Parl. Hist. 7. 418.

the happiness of the subjects in *England*. To come to a decision upon this point, no long time need be required. To make this comparison, is stating the claim of parliament in the most favourable light: for it puts the *assumed* power of parliament, to do, “ IN ALL CASES WHATSOEVER,” *what they please*, upon the same footing with the *acknowledged* power of the King, “ to make what peers—pardon what offences, &c. *be pleases*.” But in *this* light that power is not entitled to be viewed. Such is the wisdom of the *English* constitution, that it “ declares” the King may transgress a “ boundary laid down by evident consequence,” even by using *the power* with which he is *expressly* vested by the constitution, in doing *those very acts* which he is *expressly* trusted by the constitution to do—as by creating too many or improper persons, peers; or by pardoning too many or too great offences, &c. But has the constitution of ENGLAND *expressly* “ declared,” that the parliament of GREAT BRITAIN may take away the money of ENGLISH colonists without their consent, and deprive them of tryal by jury, &c? It cannot be pretended. True it is, that it has been solemnly declared by *parliament*, that *parliament has* such a power. But that declaration leaves the point just as it was before: For if parliament had not the power before, the declaration could not give it. Indeed if parliament is really “ omnipotent

potent *," that power is just and constitutional. We further observe, that the constitution has not *expressly* drawn the line beyond which, if a king shall "go," resistance becomes *lawful*. The learned author of those commentaries, that, notwithstanding some human frailties, do him so much honor, has thought proper, when treating of this subject, to point out the "*precedent*" of the Revolution, as fixing the line. We would not venture any reflection on so great a man. It may not become us. Nor can we be provoked by his expressions concerning colonists; because they perhaps contain his real, though hasty sentiments. Surely, it was not his intention to condemn those excellent men, who casting every tender consideration behind them, nobly presented themselves against the tyranny of the unfortunate and misguided *Charles's* reign; those men whom the House of Commons, even after the Restoration, would not suffer to be censured.

WE are sensible of the objection that may be made, as to drawing a line between rights on each side, and the case of a plain violation of rights. We think it not material. Circumstances have *actually* produced, and may again produce this question. — What conduct of a prince renders resistance lawful? *James* the Second, and his father violated

* I Blackstone, 161.

lated *express rights of their subjects*, by doing what *their own express rights* gave them no title to do, as by raising money, and levying troops, without consent of parliament. It is not even *settled*, what violation of those will justify resistance. But may not some future prince confining himself to the exercise of *his own express rights*, such as have been mentioned, act in a manner, that will be a transgression of a “boundary” laid down by “evident consequence,” the “constitution declaring he should go no further?” May not this exercise of these *his express rights*, be so far extended, as to introduce *universal confusion* and a *subversion of the ends of government*? The whole may be oppressive, and yet any single instance legal. The cases may be improbable; but we have seen and now feel events once as little expected. Is it not possible, that one of these cases *may happen*; If it *does*, has the constitution *expressly* drawn a line, beyond which resistance becomes lawful? It has not. But it may be said, a king *cannot arm* against his subjects—he *cannot raise money* without consent of parliament. This is the constitutional check upon him. If he should, it would be a violation of *their express rights*. If *their purses* are shut, *his power shrinks*. True. Unhappy colonists! Our money may be taken from us—and standing armies established over us, without our consent—every *expressly* declared constitutional

tutional check dissolved, and the modes of opposition for relief so contracted, as to leave us only the miserable alternative of supplication or violence. And these, it seems, are the liberties of *Americans*. Because the constitution has not “*expressly declared*” the line between the rights of the mother country and those of her colonists, THEREFORE, the latter have *no rights*. A logic, equally edifying to the heads and hearts of men of sense and humanity.

WE assert, a line there must be, and shall now proceed, with great deference to the judgment of others, to trace that line, according to the ideas we entertain: And it is with satisfaction we can say, that the records, statutes, law-books, and most approved writers of our mother country, those “dead but most faithful counsellors” (as Sir Edward Coke calls them) “who cannot be daunted by fear, nor muzzled by affection, reward, or hope of preferment, and therefore may safely be believed,” confirm the principles we maintain.

LIBERTY, life, or property, can, with no consistency of words or ideas, be termed a *right* of the *possessors*, while *others* have a *right* of taking them away *at pleasure*. The most distinguished authors, that have written on government, declare it to be “instituted for

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the benefit of the people; and that it never will have this tendency, where it is *unlimited*." Even conquest* itself is held not to destroy all

* " But in order to say something more particular concerning this subject, let us observe that the natural state of nations in respect to each other, is that of society and peace. This society is likewise a state of equality and independance, which establishes a parity of right between them; and engages them to have the same regard and respect for one another. Hence the general principle of the law of nations is nothing more than the general law of sociability, which obliges all nations that have any intercourse with one another, to practise those duties to which individuals are naturally subject.

" These remarks may serve to give us a just idea of that art, so necessary to the directors of states, and distinguished commonly by the name of *polity*. Polity considered with regard to foreign states, is that ability and address by which a sovereign provides for the preservation, safety, prosperity and glory of the nation he governs, by respecting the laws of justice and humanity; that is, without doing any injury to other states, but rather by procuring their advantage, as much as in reason can be expected. Thus the polity of sovereigns is the same as prudence among private people; and as we condemn in the latter any art or cunning that makes them pursue their own advantage to the prejudice of others, so the like art would be consurable in princes, were they bent upon procuring the advantage of their own people by injuring other nations. The *reason of state*, so often alledged to justify the proceedings or enterprises of princes, cannot really be admitted for this end, but inasmuch as it is reconcileable with the common interest of nations, or which amounts to the same thing, with the unalterable rules of sincerity, justice, and humanity."

" Grotius indeed acknowledges that the law of nature is common to all nations; yet he establishes a positive law of

all the rights of the conquered. Such is the
merciful reverence judged by the best and
F 2 wisest

of nations contradistinct from the law of nature; and re-duces this law of nations to a sort of human law, which has acquired a power of obliging in consequence of the will and consent of all or of a great many nations *. He adds, that the maxims of this law of nations are proved by the perpetual practice of people, and the testimony of historians.

“ But it has been justly observed that this pretended law of nations, contradistinct from the law of nature, and invested nevertheless with a force of obliging, whether people consent to it or not, is a supposition destitute of all foundation †.

“ For 1. all nations are with regard to one another in a natural independance and equality. If there be therefore any common law between them, it must proceed from God their common sovereign.

“ 2. As for what relates to customs established by an express or tacit consent among nations, these customs are neither of themselves, nor universally, nor always obli-gatory. For from this only, that several nations have a&t-ed towards one another for a long time after a particular manner in particular cases, it does not follow that they have laid themselves under a necessity of acting always in the same manner for the time to come, and much less that other nations are obliged to conform to these customs.

“ 3. Again, these customs are so much the less capa-ble of being an obligatory rule of themselves, as they may happen to be bad or unjust. The profession of a corsair,
or

* See Grotius, rights of war and peace: preliminary discourse, §. 18.
and book 1. chap. 1. §. 14.

† See Puffendorf, law of nature and nations, book 2. chap. 3. §. 23.
in Barbejac's notes.

wisest men to be due to human nature, and frequently observed even by conquerors themselves.

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or pirate, was, by a kind of consent, esteemed a long while as lawful, between nations that were not united by alliance or treaty. It seems likewise, that some nations allowed themselves the use of poisoned arms in time of war *. Shall we say that these are customs authorised by the law of nations, and really obligatory in respect to different people? Or shall we not rather consider them as barbarous practices; practices from which every just and well governed nation ought to refrain. We cannot therefore avoid appealing always to the law of nature, the only one that is really universal, whenever we want to judge whether the customs established between nations have any obligatory effect.

“ 4. All that can be said on this subject is, that when customs of an innocent nature are introduced among nations; each of them is reasonably supposed to submit to those customs, as long as they have not made any declaration to the contrary. This is all the force or effect that can be given to received customs; but a very different effect from that of a law properly so called.”

BURLAMAQ. *Princ. of nat. law*, 1 vol. p. 196—199.

‘ But I will conclude with that which I find reported by Sir John Davis, who was the king’s sergeant; and so, by the duty of his place, would no doubt maintain, to the uttermost of his power, the king’s prerogative royal; and yet it was by him thus said, in those reports of his upon the case of *tanistry customs*, ‘ That the kings of England always have had a monarchy royal, and not a monarchy signoral; where, under the first, faith he, the subjects are free men, and have property in their goods, and freehold and inheritance in their lands; but, under the latter, they are as villains and

* See Virgil, *Aeneid*, book 10, v. 139, with the 15th note of the Abbe des Fontaines.

IN fine, a power of government, in its nature tending to the misery of the people, as a power that is *unlimited*, or in other words, a power *in which the people have no share**, is proved

‘ and slaves, and have property in nothing. And therefore, saith he, when a royal monarch makes a new conquest, yet, if he receives any of the nation’s antient inhabitants into his protection ; they, and their heirs after them, shall enjoy their lands and liberties according to the laws.’ And there he voucheth this precedent and judgment following, given before *William the Conqueror* himself, viz.

‘ That one *Sherborn*, at the time of the Conquest, being owner of a castle and lands in *Norfolk*, the Conqueror gave the same to one *Warren*, a *Norman*; and, *Sherborn* dying, the heir claiming the same by descent according to the law, it was, before the Conqueror himself, adjudged for the heir, and that the gift thereof by the Conqueror was void *.’

PARL. DEBATES, 7 vol. p. 384.

See also *Puffendorf’s Law of Nature and Nations*, b. 3. ch. 8. and b. 8. ch. 6.

It is held by the best writers, that a conqueror in a just war, acquires not a right to the property of those of the subdued country, who opposed him not, nor of the posterity of those who did : nor can the pretence of obtaining satisfaction for the charges and damages of the war justify such a claim.

* “ In a free state, every man, who is supposed *a free agent*, ought to be, in some measure, *his own governor*, and therefore a branch, at least, of the *legislative power* ought to reside in the whole body of the people. And this power, when the territories of the state are small and its citizens easily known,

* See Davis’s reports, Lond. 1628, p. 41.

proved to be, by reason and the experience of all ages and countries, cannot be a *rightful* or *legal* power. For, as an excellent Bishop of the

known, should be expressed by the people in their aggregate or collective capacity, as was wisely ordained in the petty republics of *Greece*, and the first rudiments of the Roman state. But this will be highly inconvenient when the public territory is extended to any considerable degree, and the number of citizens is increased. In so large a state as ours, it is therefore very wisely contrived that the people should do that by their representatives, which it is impracticable to perform in person."

I BLACKSTONE 158, 159.

The above quoted words are sufficient of themselves to refute the notion of "virtual representation" of *Americans* in parliament.

As to the argument drawn from similitude between the case of those in *England*, not qualified to vote by their property, though possessed of a considerable share, as proprietors of the funds---the *East India company*---merchants---manufacturers, &c. and the case of colonists, the true answer is, that there is no resemblance whatever between the cases. A few propositions will prove it: But it may be proper to premise---1st. If representation was intended by the constitution of *England*, a complete representation was intended; for the reason of having *any*, requires having a complete one, as being the *best*. 2dly.—If a complete representation was intended by the constitution, every defect in the representation is against the intention of the constitution. 3dly. If a respectable part of the people in *England* is not represented, it is a defect. 4thly. If therefore, the intention of the constitution is to be regarded as the constitution, it involves a plain absurdity, to infer a greater defect being constitutional, from a smaller defect which is unconstitutional. 5thly. The intention of the constitution must be regarded—and practices inconsistent with its

the Church of *England* argues*, “the ends of government cannot be answered by a total dissolution of all happiness at present, and of all hopes for the future.”

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its design, must be amended by it, if the *happiness* which it means to promote and secure, is to be regarded. 6thly. If there is not such a *representation* in *England*, as the constitution requires, there *ought* to be. As to the resemblance above supposed. 1st. If many inhabitants of *England* HAVE NOT a right to vote in the choice of members of the House of Commons, there are many who HAVE. 2dly. Not one inhabitant of the colonies *has* that right. 3dly. Some representation is better than *none*, though a complete one cannot be obtained. The first is a *defect of mode*, the latter an *extinction of the substance*. There is, to a nice observer of nature, a perceptible difference between a *deformed man* and a *DEAD man*. 4thly. Proprietors of the funds, &c. though they have no right to such vote, as proprietors, &c. may yet have it under another character, as *freeholders*, &c. 5thly. When acting as *freeholders*, &c. they may take care of their interests as proprietors, &c. for—6thly. Their being proprietors, &c. does not disqualify them from acquiring and enjoying a right to such vote by becoming *freeholders*, &c. but 7thly. By acquiring and enjoying a right to such vote, the *colonists* must cease to be inhabitants of the colonies.—8thly. Their being inhabitants of the colonies, therefore, disqualifies them from acquiring and enjoying the right to such vote.—9thly. If those not entitled to such vote in *England* were not bound by statutes made there they would not be bound by statutes, nor taxed *at all*, though possessor of great property—but 10thly. The colonists are *bound and taxed* by the acts of their assemblies. 11thly. Even those not entitled to such vote in *England*, and incapable of obtaining it, have this protection, that *representatives* and their *electors* are bound by the laws made, as well as the rest

* HOADLEY's Disc. on government.

THE just inference therefore from these premises would be an exclusion of *any* power of parliament over these colonies, rather than the admission of an *unbounded* power.

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rest of the people—and the connections between the *representatives*, their *electors*, and the *rest of the people*, all living together in the same kingdom, are so many and so intimate, that even the *actually unrepresented* cannot be affected, unless the *representatives* and their *electors* are affected also. 12thly. Totally different is the condition of colonists, if bound by statutes generally.—By the acts of parliament for raising a revenue in *America*, the Commons use the words, “**GIVE AND GRANT.**” Can men give and grant what they have not? Did any of those acts take a single penny out of the pocket of a single **GIVER** and **GRANTOR**? No. So far from it, that if there is any truth in the proverb, and money saved is money got, these “*dona ferentes*” gentlemen put money into their pockets by their * “*loyal and dutiful*” generosity. **EVERY INDIVIDUAL** of them acquired by bestowing. Pretensions *thus to give*, are such contradictions to fact and sense, that in *making* them, a sanction of injustice is sought from a principle of the constitution, and in *describing* them, a solecism in speech becomes a proper expression. It must be acknowledged however, that the Commons are more than sound divines, for they improve upon the text, † and “*count their loss for gain.*”

Statutes might grind us, while not an *elector* in *England* would know or regard our sufferings—if acquainted with them, he might think the statutes inflicting them, **JUST** and **POLITICAL**. An open avowal has been made in parliament—that it is † “**the INDISPENSABLE DUTY** of parliament,

* Preambles to statutes for raising a revenue in *America*.

† *Philippians*, iii. 7.

‡ These words are extracted from the protest of the Lords on the repeal of the *American stamp-act*—§. 6.—61 Lords were against the repeal, 33 of them signed the protest.

We well know, that the colonists are charged by many persons in *Great-Britain*, with attempting to obtain such an exclusion and a total independance on her. As well we know the accusation to be utterly false. We are become criminal in the sight of such persons, by refusing to be guilty of the highest crime against ourselves and our posterity. **NOLUMUS LEGES ANGLIÆ MUTARI.** This is the rebellion

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liament to tax the colonies IN ORDER TO EASE THE GENTRY AND PEOPLE OF GREAT-BRITAIN.” Let not Americans ever forget the lordly words ! to understand them fully, we should consider—

Our dispute includes not only the present taxes laid upon us. The universal property of *England* was interested in Mr. *Hambden's* suit, about a few shillings. If the crown had a right to *those* shillings, it had a right to *every* shilling of *every* man in the kingdom. *Great-Britain* is about **ONE HUNDRED AND FORTY MILLIONS OF POUNDS STERLING** in debt. If she can pay *any part* of that debt, by taxing us, she may pay *the whole* by taxing us, if we can raise the money. If we cannot, yet as we are upbraided continually in pamphlets and papers with the richness of our houses, our furniture, our equipage, our tables, and our dress, she may be made to think we abound too much in these *conveniences*. If we are reduced to the condition of *French* peasants, it is no matter. We belong to the people of *Great-Britain*: And all *British* subjects, but *Americans*, may do what they please with their own. “It is her indispensable DUTY, say their lordships, to ease herself by taxing us;” and surely there is virtue enough left in a *British* parliament, notwithstanding all the dreadful intelligence *British* writers send us over, to perform *that* “duty,” exactly. But this is not all. There are certain wicked *Frenchmen* and *Spaniards*, that in every pe-

bellion with which we are stigmatized. [We have committed the like offence, that was objected by the polite and humane *Fimbria* against a *rude* senator of his time. We have *disrespect*—“fully refused to receive the *whole* weapon into our body.” We could not do it, *and live.*

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riod of twenty or thirty years oblige *Great-Britain* to add thirty or forty millions to her debt. Upon an average, since the Revolution, she runs annually in debt about a million and an half. Can it be expected, her ministers will be kinder to us than they have been to her? where will the demand upon us, where will our wretchedness stop, if we have not resolution enough to defend ourselves?

A statute intended to have force on the people of *Great-Britain*, is the case of *A STATE acting upon ITSELF.* A statute intended to have force on the people of *America*, is the case of *ONE state acting upon ANOTHER.* The people of *Great-Britain*, who in the first case are *subject* to the statute---in the second, are the absolute sovereigns *who impose* it on others.

“Virtual representation” then, as applied to colonists ---is, to borrow expressions of the excellent archbishop *Tillotson*, on another occasion, altering only two words —“An absurdity of that monstrous and massy weight, that no human authority or wit are able to support it. It will “make the very pillars of St.” *Stephens* “crack, and requires more volumes to make it good than would fill” *Westminster Hall*.

Yet this most despicable notion has been the *pretence for our fellow subjects* * clapping muskets to our breasts, and taking our money out of our pockets.

* “Win their hearts, and you may soon have their hands and purses,” was the advice of old lord *Burleigh* to queen *Elizabeth*. She was wise enough to take it. The world knows the consequences.

But *that* must be acknowledged to be a poor excuse, equally inconsistent with good breeding and the supreme legislature of Great-Britain.

FOR these ten years past we have been incessantly * attacked. Hard is our fate, when to escape the character of rebels, we must be degraded into that of slaves: as if there was no medium, between the two extremes of anarchy and despotism, where innocence and freedom could find repose and safety.

WHY should we be exhibited to mankind, as a people adjudged by parliament unworthy of freedom? The thought alone is insupportable. Even those unhappy persons, who have had the misfortune of being born under the

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* 4 Geo. 3. ch. 15. 4 Geo. 3. ch. 34. 5 Geo. 3. ch. 12.
 5 Geo. 3. ch. 45. 6 Geo. 3. ch. 12. 6 Geo. 3. ch. 52. 7
 Geo. 3. chap. 41. 7 Geo. 3. ch. 46. 7 Geo. 3. ch. 59. 8
 Geo. 3. ch. 22. The resolves that colonists may be tried in *England* under the 35 Hen. 8---The blockade of *Boston*--the *Rhode Island* court, &c. The statutes since the 8th year of this reign, relating to the colonies, follow one another much in the same quick manner as before: but they could not be collected. Many of the statutes here mentioned, particularly those relating to the admiralty courts and the commissioners of the customs, are connected with a multitude of other statutes, by being compared with which the artifices will appear, that gradually departing from the laws of *England*, have at length invested these courts and commissioners with such new, unreasonable, unconstitutional and dangerous powers.

yoke of bondage, imposed by the cruel laws, if they may be called laws, of the land where they received their birth, no sooner breathe the air of *England*, though they touch her shore only by accident, * than they instantly become freemen. Strange contradiction †! The *same* kingdom at the *same* time, the *asylum* and the *bane* of liberty.

To return to the charge against us, we can safely appeal to that Being, from whom no thought

* *Somerset's case.*

† To this contradiction, the following may be added—
Her policy *at once* to keep peace with her *natural enemies*, and to provoke her *natural friends*, whose assistance one day—and that day seems to be approaching—in the vicissitudes of human affairs, great as she is, she may want;—her interest, as she thinks, to *protect* and to *oppress* PROTESTANT countries---to abhor a *large standing army* and yet voluntarily to put herself under the absolute necessity, of perpetuating an *immensely large one*, to govern the many millions of slaves she expects soon to have on this vast continent. Two of the shrewdest, though not best emperors, that ever lived, *Augustus* and *Tiberius*, prohibited every man of distinction from setting his foot in *Egypt*, * because of the importance of that province to *Rome*. But *Great-Britain*, as if these numerous provinces, much more remote from her, than *Egypt* from *Rome*, were of little consequence, willingly obliges herself to trust a mighty armed power into the hands of a subject, in these colonies, the tempting interest of which subject and of the people, may engage them to unite in establishing an independent empire, on her own model. *Great-Britain* ought not to forget, that *Rome* was ruined by keeping standing armies in her provinces.

* *Tac.*

thought can be concealed, that our warmest wish and utmost ambition is, that we and our posterity may ever remain subordinate to, and dependent upon our parent state. This submission our reason approves, our affection dictates, our duty commands, and our interest enforces.

If this submission indeed implies a dissolution of our constitution and a renunciation of our liberty, we should be unworthy of our relation to her, if we should not frankly declare, that we regard it with *horror; and every

* The *Privernates* had revolted from the *Romans*, but were reduced. The question was, what judgment should be given against them. This is *Livy's* account of the affair, in the 21st chapter of his 8th book.

“Quum ipsa per se res anceps esset, prout cujusque ingenium erat, atrocius mitiusve suadentibus; tum incertiora omnia unus ex Privernatibus legatis fecit, magis conditionis, in qua natus esset, quam praesentis necessitas, memor: qui, interrogatus à quodam tristioris sententiae auctore, quam pœnam meritos Privernates censeret? eam, inquit, quam merentur, qui se libertate dignos censem: cuius quum feroci responso infestiores factos videret consul eos, qui antè Privernatum causam impugnabant; ut ipse benignâ interrogatione mitius responsum eliceret, Quid, si pœnam, inquit, remittimus vobis, quam nos pacem vobiscum habituros speremus? Si bonam dederitis, inquit, & fidam & perpetuam: si malam, haud diuturnam. Tum verò minari, nec id ambiguè, Privernatem quidam, & illis vocibus ad rebellandum incitari pacatos populos, pars melior senatus ad meliora responsum trahere, & dicere, Viri, & liberi, vocem auditam, an credi posse, ullum populum, aut hominem denique, in ea conditione, cuius cum pœnitentia, diutiùs, quam necesse sit, mansurum?

every true *Englishman* will applaud this just distinction and candid declaration. Our defence necessarily touches chords in unison with the fibres of his honest heart. They must vibrate in sympathetic tones. If we, his kindred, should be base enough to promise the humiliating subjection, he could not believe us. We should suffer all the infamy of the engagement, without finding the benefit expected from being thought as contemptible as we should undertake to be.]

But this submission implies not such insupportable evils: and our amazement is inexpressible, when we consider the gradual increase of these colonies, from their slender beginnings in the last century to their late flourishing condition, and how prodigiously, since their settlement, our parent state has advanced in wealth, force and influence, till she is become the first power on the sea, and the envy of the world—that these our better days should not strike conviction into every mind, that the freedom and happiness of the colonists

mansurum? Ibi pacem esse fidam, ubi voluntarii pacati sint: neque eo loco, ubi servitutem esse velint, fidem sperandam esse. In hanc sententiam maximè consul ipse inclinavit animos, identidem ad principes sententiarum consulares, uti exaudiri posset à pluribus, dicendo, *Eos demum, qui nihil, præterquam de libertate, cogitent, dignos esse, qui Romani fi-ant.* Itaque & in senatu causam obtinuere, & ex aucto-ritate Patrum latum ad populum est, ut Privernatibus CI-VITAS DABITUR.”

colonists are not inconsistent with her authority and prosperity.

The experience of more than one hundred years will surely be deemed, by wise men, to have some weight in the scale of evidence to support our opinion. We might justly ask of her, why we are not permitted to go on, as we have been used to do since our existence, conferring mutual benefits, thereby strengthening each other, more and more discovering the reciprocal advantages of our connection, and daily cultivating affections, encouraged by those advantages?

[WHAT unknown offences have we committed against her within these ten years, to provoke such an unexampled change in her conduct towards us? In the last war, she acknowledged us repeatedly, to be faithful, dutiful, zealous and useful in her cause. Is it criminal in us, that our numbers, by the favour of Divine Providence, have greatly increased? That the poor chuse to fly from their native countries in *Europe* to this continent? Or, that we have so much improved these woods, that if we can be forced into an unsuccessful resistance, avarice itself might be satiated with our forfeitures?]

It cannot with truth be urged, that projects of *innovation* have commenced with us.

Facts

Facts and their dates prove the contrary*. Not a disturbance has happened on any part of this continent, but in consequence of some immediate preceding provocation.

To what purpose? The charge of our affecting one great, or many small republics, must appear as contemptible a madness to her, as it does to us. Divided as we are into many provinces †, and incapable of union, except against

* “The winds lift up the waves,”—said a wise man—yet we read of a weak man, who scourged waves—but he had not raised them. To excite commotions, and then to scourge for being excited, is an addition to the wildness of a *Xerxes*, reserved more particularly to distinguish the present age, already sufficiently illustrious by the injuries offered to the rights of human nature.

† The genius of a *Beccaria* suggested to him the condition of a large empire verging into servitude—the only plan for saving it—and the difficulty of executing that plan. “An overgrown republic (says he, and such a limited monarchy as that of *Great-Britain* with such an extent of dominions, may well be called “an overgrown republic,”) can only be saved from despotism, by subdividing it into a number of confederate republics. But how is this practicable? By a despotic dictator, who with the courage of *Sylla*, has as much genius for building up, as that *Roman* had for pulling down. If he be an ambitious man, his reward will be immortal glory; if a philosopher, the blessings of his fellow citizens will sufficiently console him for the loss of authority, though he should not be insensible to their ingratitude.”

What was argument in *Italy*, is reality to *Great-Britain*, with this additional circumstance in her favour, that she must always continue, if she wisely conducts her affairs, though

against a common danger, she knew, that we could not think of embarking our treasures

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though less than *all*, yet greater than *any*. The immense advantages of such a situation are worthy the closest attention of every *Briton*. To a man, who has considered them with that attention, perhaps it will not appear too bold to aver, that, if an archangel had planned the connexion between *Great Britain* and her colonies, he could not have fixed it on a more lasting and beneficial foundation, unless he could have changed human nature. A mighty naval power at the head of the whole—that power, a parent state, with all the endearing sentiments attending the relationship—that never could disoblige, but with design—the dependent states much more apt to have feuds among themselves—she the umpire and controuler—those states producing every article necessary to her greatness—their interest, that she should continue free and flourishing—their ability to throw a considerable weight into the scale, should her government get UNDULY POISED—she and all those states PROTESTANT—are some of the circumstances, that delineated by the masterly hand of a *Beccaria*, would exhibit a plan, vindicating the ways of heaven, and demonstrating, that humanity and policy are nearly related. An *Alexander*, a *Cæsar*, a *Charles*, a *Lewis*, and others have fought through fields of blood, for universal empire. *Great-Britain* has a certainty, by population and commerce alone, of attaining to the most astonishing and well founded power the world ever saw. The circumstances of her situation are new and striking. Heaven has offered to her, glory and prosperity without measure. Her wise ministers disdain to accept them—and prefer—“ *a pepper corn**.”

So directly opposite to the interest of *Great Britain* has the conduct of *administration* been for some time past, that it may safely be affirmed, that, if their view was to establish arbitrary power over *Great Britain*, schemes more dangerous could not have been laid. To profess

this

* Mr. *Nugent's* speech.

of tranquillity and liberty, on an ocean of blood, in a wandering expedition to some *Utopian* port. The history of mankind, from the remotest

this purpose, would ensure a defeat. Any man, who had such a design, would first take the opportunity of peace, TO SET ONE PART OF THE SUBJECT AGAINST THE OTHER.—This might be done in the following manner.

Let every session of parliament produce a fresh injury. Give no rest, or hope of rest. Let insult added to insult fill up the vacancies between the sessions. Tease and persecute into opposition. Then let ministers themselves rejoice in the freedom of the press. Let every action of the oppressed be exaggerated. Let innumerable false invectives be vented in pamphlets and news-papers. Let all the provocations and excuses be concealed from public sight as much as possible. Load the devoted with the terms of traitors and rebels. Nearly in this way *Scotland* was treated by the arbitrary ministry of *Charles the First*. But the parliament and people of *England* had common sense and virtue. The base deception could not pass upon them. They saw the snare laid for them; and resented it so deeply, that an army of *Englishmen* fled before an army of *Scotchmen* at *Newburn*. For once it was glorious to fly. But it required *English* heads and *English* hearts to understand and to act the part.

Thus the colonies have been treated. At last a civil war may be worked up. It should be considered, as Lord *Mansfield* expresses it—whether “the play is worth the candle.” In such a war, every victory will be a defeat. If the colonies are subdued, vast sums must be raised, and a prodigious army must be supported, to keep them in subjection. *Great-Britain* must feel the weight of that influence, added to the power of the crown. The colonies are encreasing. Who can compute the extent and effect of

moteſt antiquity, furniſhes not a ſingle in-
ſtance of a people conſiſting of huſbandmen

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of ſuch an influence *? Undone by her victories, ſhe muſt
reſign her LIBERTY or ſome future MONARCH WITH HER
COLONIES, unleſs ſhe firſt loſes them in another way. If
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* "But, on the other hand, it is to be conſidered, that every prince, in the firſt parliament after his accession, has by long uſage a truly royal addition to his hereditary revenue ſettled upon him for his life; and has never any occaſion to apply to parliament for ſupplies, but upon ſome public neceſſity of the whole realm. This reſtores to him that conſtitutional independence which at his firſt accession ſeems, it muſt be owned, to be wanting. And then, with regard to power, we may find perhaps that the hands of government are at leaſt ſufficiently ſtrengthened; and that an English monarch is now in no danger of being overborne by either the nobility or the people. The instruments of power are not perhaps ſo open and avowed as they formerly were, and therefore are the leſs liable to jealous and invidious reſlections; but they are not the weaker upon that account. In ſhort, our naſional debt and taxes (besides the inconveniences beforementioned) have alſo in their naſtal consequences thrown ſuch a weight of power into the executive ſcale of government, as we can- not think was intended by our patriot anſtors; who gloriouſly ſtruggled for the abolition of the then formidable parts of the prerogative, and by an unaccountable want of foreſight eſtabliſhed this ſyſtem in their stead. The entire collection and managemen t of ſo vaſt a revenue, being placed in the hands of the crown, have given riſe to ſuſh a muſtude of new officers, created by and removeable at the royal pleaſure, that they have extended the influence of government to every corner of the nation. Witneſs the commissioners, and the muſtude of deſerđents on the cuſtoms, in every port of the kingdom; the commissioners of exciſe, and their numerouſ ſubbaſiers, in every inland diſtrićt: the poſtmasters, and their ſervants, planted in every town, and upon every public road; the commissioners of the ſtamps, and their diſtributors, which are full as ſcattered and full as numerouſ; the officers of the ſalt duty, which, though a ſpecies of exciſe and conducted in the ſame manner, are yet made a diſtinct corps from the ordinary managers of that revenue; the ſurveyors of houses and windſaws; the receivers of the land tax; the managers of lotteries; and the commissioners of haukey coaches; all which are either mediately or immediately appointed by the crown, and removeable at pleasure without any reaſon assigned: the'e, it requires but little penetration to ſee, muſt give that power, on which they depend for ſu- ſiſtence, an influence moſt amazin gly extenſive. To this may be added the frequent opportunities of confeiring particular obligations, by prefe- rence in loans, ſubſcriptioſ, tickets, remittances, and other money traſfactions, which will greatly encreaſe this influence; and that over thoſe perſons whose attachment, on account of their wealth, is frequently the moſt deſirabla. All this is the naſural, though perhaps the unforeſeen. conſe- quence of erecting our funds of credit, and to ſupport them eſtabliſhing our preſent perpetual taxes: the whole of which is intirely new ſince the

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and merchants, voluntarily engaging in such a phrenzy of ambition. No. Our highest pride

she is unfortunate, public calamities may make great changes. Such changes seem to be intended by some men. *Great-Britain* has been led into the *Rubicon*. She has not yet past it. We consider the hostilities already practised, as the manœuvres of a ministerial war. We know the machinations formed against us, and the favourite publications industriously spread abroad, to excite a jealousy of us among our *British* brethren. We know how acceptable to many an earthquake would be to “sink some of the colonies in the ocean”—and how pleasing, to employ the rest “in raising *staple* commodities:” That we are thought “too numerous,” and how much it would be judged by some for the interest of *Great-Britain* if a pestilence should sweep off a million and a half of us. These wonderful lucubrations have not escaped us. But here we are, by Divine Providence, three millions of souls. What can be done with with us? If we were

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Restoration in 1660; and by far the greatest part since the Revolution in 1688. And the same may be said with regard to the officers in our numerous army, and the places which the army has created. All which put together gives the executive power so persuasive an energy with respect to the persons themselves, and so prevailing an interest with their friends and families, as will amply make amends for the loss of external prerogative.

“ But, though this profusion of offices should have no effect on individuals, there is still another newly acquired branch of power; and that is, not the influence only, but the *force of a disciplined army*: paid indeed ultimately by the people, but immediately by the crown; raised by the crown, officered by the crown, commanded by the crown. They are kept on foot it is true only from year to year, and that by the power of parliament; but during that year they must, by the nature of our constitution, if raised at all, be at the absolute disposal of the crown. And there need but few words to demonstrate how great a trust is thereby reposed in the prince by his people. A trust, that is more than equivalent to a thousand little troublesome prerogatives.

“ Add to all this, that, besides the *civil list*, the *immense revenue* of almost seven millions sterl^{ing}, which is annually paid to the creditors of the public, or carried to the sinking fund, is first deposited in the royal exchequer, and thence issued out to the respective offices of payment. This revenue the people can never refuse to raise, because it is made perpetual by act of parliament; which also, when well considered, will appear to be a trust of great delicacy and high importance.”

I BLACKSTONE's Com. b. I. ch. 8. p 334—336.

pride and glory has been, with humble unsuspecting

to be considered, only as * PROTESTANT allies, we ought to be esteemed by a wise people. Such a people certainly would not be careful to disunite us from their interest—to make us foes when they might have us friends. Some states have thought it true policy to grant greater indulgences to remote dominions, than were enjoyed by themselves: And this policy has been much applauded. The enjoyment of valuable privileges by inferior states, under the protection of a superior, is the strongest bond of dependance. Why should we prefer a dependance on Great-Britain to a dependance on France, if we enjoy less freedom under the former, than we may under the latter? “*Firmissimum imperium, quo obedientes GAUDENT*”—or as lord chief justice Coke expresses it, in his comment on the 25th of Edward the Third, “the state of a king standeth more assured by the love and favour of the subject, than by the dread and fear of laws, &c.” † Ought Great-Britain to despise the advantages she

* Great Britain put herself to a very considerable expence last war in defence of Portugal, because that kingdom was her ally, and she derived great advantages from an intercourse with her. But what are those advantages or the affections arising from them, when compared to the advantages and affections that connect these colonies with Great Britain? Words cannot express the surprize, that men free from passion must feel, on considering her impolicy, in labouring to disjoin from herself the only true friends she has in the world. If her ministers were pensioners of France and Spain, they could not pursue measures more pleasing and advantageous to those kingdoms.

† “ During all our happy days of concord, partly from our national moderation, and partly from the wisdom, and sometimes perhaps from the carelessness of our ministers, they have been trusted in a good measure with the entire management of their affairs; and the success they have met with ought to be to us an ever memorable proof, that THE TRUE ART OF GOVERNMENT CONSISTS IN NOT GOVERNING TOO MUCH. And why should friendship and gratitude, and long attachments, which inspire all the relish and sweetness of private life, be supposed to be of no weight in the intercourse between great communities? These are principles of human nature, which act with much greater certainty on numbers than on individuals. If properly cultivated they may to us be productive of the noblest benefits; and, at all events, will neither lessen the extent of our power, nor shorten the duration of it.”

suspecting duty * to labour in contributing to elevate her to that exalted station she holds among the nations of the earth, and which, we still ardently desire and pray, she may hold, with fresh accessions of fame and prosperity, till time shall be no more.

THESE being our sentiments, and, we are fully convinced, the sentiments of our brethren throughout the colonies, with unspeakable affliction, we find ourselves obliged to oppose that system of dominion over us, arising

she actually receives with safety from us, because, by the adoption of Spanish maxims, she might with danger extort more?

It is the duty of every colonist to oppose such maxims. They threaten ruin to our mother country and to us. We should be guilty of treason against our sovereign and the majesty of the people of *England*, if we did not oppose them. *England* must be saved in *America*. Hereafter, she will *rejoice* that we have *resisted*—and *thank* us for having *offended* her. Her wisdom will in a short time discover, the artifices that have been used by her worst enemies to enflame her against her dutiful children; that she has supported not her own cause but the cause of an administration; and will clearly distinguish, which will most conduce to her benefit, safety, and glory, *well treated and affectionate colonies, or millions of slaves, an unnatural encrease of her standing forces, and an addition to the influence of the crown, defying all calculation.*

* It has been suggested, “ that subjects sometimes err, by not believing that princes mean as well as they do”—But, the instances are numerous where princes and their courtiers err, by not believing, that subjects mean as well as they do.

sing from counsels pernicious both to our parent and her children—to strive, if it be possible, to close the breaches made in our former concord—and stop the sources of future animosities.—And may GOD Almighty, who delights in the titles of *just* and *merciful*, incline the hearts of all parties to that equitable and benevolent temper, which is necessary, solidly to establish peace and harmony, in the place of confusion and dissension.

THE legislative authority claimed by parliament over these colonies consists of two heads—first, a general power of internal legislation; and secondly, a power of regulating our trade: both she contends are unlimited. Under the first, may be included among other powers, those of forbiding us to * worship our Creator in the manner we think most acceptable to him—imposing taxes on us—collecting them by their own officers—enforcing the collection by admiralty courts or courts martial—abolishing trials by jury—establishing a standing army † among us in time

* See *Canada* bill.

† The army under the command of General GAGE, in the province of *Massachusetts Bay* alone amounts to several thousand men—kept there without consent of their assembly, and to be augmented as the General shall think proper.

time of peace, without consent of our assemblies

‘ I must own, Sir, I can see but one reason for raising
 ‘ at this present juncture, this additional number of
 ‘ troops, and that is to strengthen the hands of the mi-
 ‘ nister against the next election, by giving him the
 ‘ power of disposing of *commissions* to the sons, brothers,
 ‘ nephews, cousins, and friends of such as have interest
 ‘ in boroughs, into some of which, perhaps, troops may
 ‘ be sent to procure the free election of their members, in
 ‘ imitation of the late Czarina sending her troops into
 ‘ Poland to secure the free election of a king.

‘ But still there is one thing more fatal than all I have
 ‘ yet named that *must be* the consequence of so great a
 ‘ body of troops being kept on foot in *England*, and *will*
 ‘ be the finishing stroke to all our liberties. For as the towns
 ‘ in *England* will not be able much longer to contain
 ‘ quarters for them, most of those who keep public
 ‘ houses being near ruined by soldiers billeted on them ;
 ‘ so on pretence of the necessity of it, barracks will be built
 ‘ for quartering them, which will be as so many fortresses
 ‘ WITH STRONG GARRISONS IN THEM, erected in all
 ‘ parts of *England*, WHICH CAN TEND TO NOTHING,
 ‘ but by degrees to subdue and enslave the kingdom.

‘ But if ever this scheme should be attempted, it will
 ‘ be incumbent on every *Englishman* to endeavour to pre-
 ‘ vent it by *all* methods, and as it would be the *last stand*
 ‘ that could be ever made for our liberties, rather than
 ‘ suffer it to be put in execution, IT WOULD BE OUR
 ‘ DUTY TO DRAW OUR SWORDS, AND NEVER PUT
 ‘ THEM UP, till our liberties were secured, and the authors
 ‘ of our intended slavery brought to condign punishment. —
 ‘ I hope I shall be forgiven if during the debates I shall
 ‘ take the liberty of speaking again; for I am determined
 ‘ to fight inch by inch, every proposition that tends, as I
 ‘ think this does to the enslaving my country.’’

Lord Viscount GAGE’s Speech in 1739. Parl. Deb.
 book 11th, p. 388. See Montesq. on standing armies.

blies—paying them with our money—seizing
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A minister declared in the House of Commons, that he should “ always consider it as a part of the constitution that the military should act under the civil authority.” But, by order, the commander in chief of the forces has precedence of a governor, in the province under his government. By his majesty’s *order*, transmitted in a letter dated the 9th of February 1765, from the secretary of state to the commander in chief, it is declared, “ that the orders of the commander in chief, and under him, of the brigadiers-general, commanding in the northern and southern departments, *in all military affairs, shall be supreme*, and must be obeyed by the troops, as such, *in all the civil governments in America*. That in cases, where no *specifick orders* have been given by the commander in chief, or by the brigadier-general commanding in the district, the civil governor in council, and where no council there subsists, the civil governor, *may, for the benefit of his government, give orders for the marching of troops, the disposition of them, for making and marching detachments, escorts, and such purely military services within his government, to the commanding officer of the troops, who is to give proper order for carrying the same into execution: PROVIDED they are not contradictory to, or incompatible with, any order he may have received from the commander in chief, or the brigadier general OF THE DISTRICT.*”

In May 1769 the house of representatives for *Massachusetts-Bay*, requested Governor *Bernard* "to give the necessary and effectual orders for the removal of the forces *by sea and land* out of the port of *Boston*, and from the gate of the city, DURING THE SESSION OF THE SAID ASSEMBLY;" to which he answered—"Gentlemen, I have NO AUTHORITY over his majesty's ships in this port or his troops within this town, nor can I give any orders for their removal.

May 31, 1769.

Fra. Bernard."

Thus, our governors, the captains general and commanders in chief, representing the sovereign, and known

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our young men * for recruits—changing constitutions

to the constitution of these colonies, are deprived of their legal authority, IN TIME OF PEACE, by an order—and a *perpetual dictatorial power* established over us. To accomplish this great purpose, it was thought proper during the last war, to change the mode of granting military commissions, and to pass that to the general in *America under the great seal*. It is not known, whether this uncommon formality has been observed with regard to the *major-generals of the respective “DISTRICTS.”*

* The *Germans* have been justly celebrated in different ages for sagacity in promoting the arts, and for martial spirit; yet how unhappy have they been made in a short period of time, by that single engine of arbitrary power, a *standing army*. Their distress was wrought up to such a degree, that thousands, and tens of thousands, relinquished their native country, and fled to the wildernesses of *America*. It was a way of thinking and acting that became them. For *Germans* may truly be called the *Fathers of Englishmen*. From * *Germany* came their ancestors, and the first principles of the constitution. *Germans* therefore seem to be more justly entitled than other foreigners to the blessings of that constitution. To enjoy them, in this free country as it then was, they came here, but now unfortunately find, *arbitrary government*, and a *standing army* pursuing them even into these woods. Numbers of them now in these provinces, have served in the armies of the several princes in *Germany*, and know well, that one reason with their rulers, for putting swords into their hands, was to cut the throats of their own fathers, brothers and relations who should attempt to relieve themselves from any part of their miseries. Their former sovereigns are now compleating, it is said, the cruel tragedy of tyranny. They will not suffer those they have made wretched, to seek for a more tolerable existence in some other part of the globe. It is their DUTY, say these unfeeling princes, “ to be unhappy, and to

stitutions of government*—stopping the press—declaring any action, even a meeting of the smallest number, to consider of peaceable modes to obtain redress of grievances † high treason—taking colonists to *Great Britain* to be tried ‡—exempting “murderers” § of colonists from punishment, by carrying them to *England*, to answer indictments found in the colonies—|| shutting up our ports—prohibiting us from slitting ** iron to build our houses—making †† hats to cover our heads, or clothing to cover the rest of our bodies, &c. ‡‡

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IN

to renounce all hopes of relief.” They are prohibited from leaving their country. Those who have already escaped into these colonies, remember what they and their parents suffered in *Germany*. The old tell the stories of their oppressions to the younger; and however *improbable* it may appear on the other side of the *Atlantic*, it is asserted by persons well acquainted with this people, that they have *very little inclination to suffer the same cruelties again in America.*

* Bill for changing the constitution of *Massachusetts Bay*.

† General *Gage’s proclamation*, dated June 29, 1774.

‡ Resolves in the House of Lords on 35th Hen. 8. ch. 2.

§ Bill for the administration of justice, &c.

|| *Boston act.*

** 23d Geo. II. ch. 29.

†† 5th Geo. II. ch. 21.

‡‡ If *Great-Britain* has a constitutional power to prohibit us from slitting iron as *she has done*, she has a constitutional power, that is, a *right*, to prohibit us from raising grain for our food; for the principle that supports

one

In our provincial legislatures, the best judges in all cases what suits us—founded on the

one law, will the other. What a vast demand must be made on her for this article, and how firmly would her dominion be established, if we *depended* wholly on her for our daily bread? Her modern writers consider colonists as slaves of *Great-Britain* shut up in a large workhouse, constantly kept at labour, in procuring such materials as she prescribes, and wearing such clothes as she sends.—Should she ever adopt the measure abovementioned, and on our complaints of grievances, withhold food from us —what then? why then, on her principle—it would be *right*—TO BE STARVED. To say in such *case* we should have any other *right*, would be a “*traitorous and rebellious denial* of the supreme legislature of *Great-Britain*,” for she “*has power of right to bind us by statutes IN ALL CASES WHATSOEVER.*”

Let not any person object that the supposition of such a case is the suggestion of fancy. The *Carthaginians*, those masters in the sublime politics of commerce—politics that have produced so many dreadful scenes upon earth, forbade the *Sardinians* to raise corn, in order to keep them in due subjection. The *East Indies*, *St. Vincents*, the proceedings at *Rhode Island*, and the *Boston act*, &c. give rise to many alarming apprehensions in *America*. There are few men on this continent would be as much surprised at that measure, as at some late measures. The beginning justifies any apprehensions. Power debauches the affections. The improbability of cases happening, is no answer in such important considerations. The laudable spirit of commerce may be inflamed into rapacity and cruelty in a nation as well as in an individual. We must regard the POWER claimed by *Great Britain*, not solely her WILL or CONTINGENCIES DEPENDING ON THAT WILL. If she affixes no limits to her *power* why should we affix *any* to its *effects*? “I know (says Mr. *Hoadly*) it is next to impossible, that any such *case* should happen: But if such things be said, and such *cases*, *in effect*, be put

the immutable and unalienable rights of human nature, the principles of the constitution, and charters.

put, it is necessary to speak, upon the *supposition of such cases*.—And methinks it is but a narrow spirited proceeding in us to go just no farther in our notions, than a compliance with our own present condition forceth us; to exclude from our regard the condition of all other nations, and all cases, but just that which hath happened last of all in our own.”

“ That the plan of governing us by withholding *necessaries of life* has been considered, and in what light colonies are viewed at home, the following extracts will partly shew.”

“ It appears that the original and grand evil attending them was, the settlement of *so considerable a part* in a climate incapable of yielding the commodities wanting in *Britain*.

“ These northern colonies, long after their *disadvantageous* nature was known, were continually increased by fresh migrations from *Europe*; which, as I before observed, ought totally to have been prevented, and such migrations have been encouraged only to the beneficial colonies.

“ Since the late war, *Britain* laid the trade of the colonies under some very strict regulations, which certainly cut off many inlets by which they formerly received much *Spanish* and *Portuguese* coin. The principle upon which such regulations were formed, of securing to the mother country alone *all matters of commerce*, I have already attempted to prove *just* and *necessary*.

“ When once their supernumeraries are become manufacturers, it will require more than *British* policy to convert them into planters.

“ I must think this point of such great importance, as to extend probably to the *annihilation of manufactures* in

charters and grants made by the crown at periods, when the power of making them was uni-

our colonies.—To conclude, it is in the proposed settlement on the *Ohio* we must first look for hemp and flax; as such great numbers of the old *American* farmers have removed and settled there, which may, in those fertile tracts, be cultivated in such abundance, as to enable us to undersell all the world, as well as supply our own consumption. It is on those high, dry, and healthy lands, that vineyards will be cultivated to the best advantage, as many of those hills contain quarries of stone, and not in the unhealthy sea-coasts of our present colonies. To these we should bring the settlers from *Europe*, or at least suffer none to go north of *New-York*; by which means our numbers would increase in those parts, where it is our interest they should increase; and the report of the settlers from the new colony on the *Ohio* would be a constant drain of people from our unprofitable northern ones, by which means they would, in future times, as well as the present, be prevented from extending their manufactures.

“ What I shall therefore venture to propose is, that the government, through the means of a few merchants acquainted with the *American* trade, that can be tolerably depended upon, should establish factors at *Boston*, *Philadelphia*, *New-York*, and a few other ports, for the sale of such cargoes of *British* manufactures as should be consigned to them; and to consist of such particularly as were most manufactured in the province, with directions immediately and continually to undersell all such colony manufactures. By this means the operation of the succeeding measures, from the number of hands rendered idle, would be so much easier to be executed.

“ The ships which carried out such cargoes should be large bulky ones, of eight, nine hundred, and one thousand tons burden, for the sake of bringing large quantities of deals, &c. back, at a less proportionate expence; and previous to their arrival in *America*, cargoes of these should

universally acknowledged by the parent state,
a power since frequently recognized by her,—
subject

should be ready for them. The colonists should be engaged to work their iron mines, and get the product ready in bars, &c. and vast quantities of deals and squared timber ready for loading the ships: All which, on the certain and immediate prospect of a sale, would easily be effected; as it is well known they have more than once proved to the legislature, that they could supply all *Europe* with these articles, had they but the *demand*.

“ But I laid it down as a rule to proceed upon, that *trade, fishing, and manufacturing*, were put an entire stop to among the colonies.

“ If the sugar islands contained ten millions of people, AS DESTITUTE OF NECESSARIES as they are at present, *Britain* would be as SURE of their allegiance as she is at present—provided no power more formidable than herself at sea arose for their protection.

“ The first dependance of our colonies, as well as all their people, is, to change the terms a little, upon corn worked into bread and iron wrought into implements; or, in other words, it is upon *necessary agriculture* and *necessary manufactures*; for a people who do not possess these, to think of throwing off the yoke of another *who supplies them with them*, is an absurd idea. This is precisely the case with our sugar islands. Let us suppose the continental colonies to be as happy in the *necessary agriculture* as they really are, but to be absolutely without manufactures, could they throw off their allegiance to *Britain* be their numbers what they would? No, certainly; for that is nothing more than supposing they should throw off their allegiance to hoes and spades, and coats and shoes, which is absurd to imagine: can any one imagine that a rebellion can be carried on among a people, when the greatest success must be attended with the loss of half the *necessaries of life*?

“ The

subject to the controul of the crown as by law established, is vested the *exclusive right of internal legislation.*

SUCH

" The following, among other effects relative to this point, would be the consequence of the *plan sketched out in the preceding section.*

" The people would depend on *Britain* for those *necessaries of life* which result from manufactures.

" The cultivation of *staples* would be more profitable to them than any other employment whatever.

" The *sale* of those staples would depend on *Britain*.

" The people would all be *spread* over an immense country as planters;---none of them collected in towns *.

" To which circumstances I shall add, in respect to *Britain's* further policy,

" That she should abide by the boundaries fixed already to the old colonies, that of the rivers' heads; and all further settling to be in *new colonies*, wherever they were traced.

" That she should keep the inland navigation of the continent, that is, of all the great lakes and navigable rivers, to herself, and not suffer any *sets* of men to navigate them, and thereby communicate from one part of the continent to another.

" That she should never suffer any *provincial troops* or *militia*

* " This point, which is of infinite importance, would pretty fully be occasioned by other parts of the plan. But, to ensure so great a point, no new towns should be suffered, nor even villages; than which nothing could be easier to manage: nor would they be any where necessary but by the magazines of naval stores for loading ships. All possible decrease of numbers in the cities already in being, should be effected. So systematically absurd is it to found towns and cities, as *Britain* has hitherto constantly done, in all the colonies she has formed."

SUCH a right vested in parliament, would place us exactly in the same situation, the people

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militia to be raised, but reserve entirely to herself the defence of the frontiers*.

“ That she should throw what obstacles she could, upon all plans of *communication* from colony to colony, or conveniences of speedy removals from place to place.

“ That in proportion as any colony declined in staples, and threatened not to be able to produce a sufficiency of them, the inhabitants should receive such encouragement to leave it, as *more* than to drain its natural increase, unless new staples were discovered for it.

“ This is *now* the case with those I have distinguished by the title of the northern colonies; insomuch that *Nova-Scotia, Canada, New-England, New-York, New-Jersey, and Pennsylvania*, would be nearly of as much benefit to this country BURIED IN THE OCEAN as they are at present.”

Political Essays.

The conduct of administration corresponds exactly with the sentiments of this modern writer, and with the measures pursued by *Philip the Second of Spain* against the *Low-Countries*. The reasons given by one in administration for attacking the colonies, seem to be copied (with some small alterations on account of religion) from the famous advice of the unfeeling duke of *Alva*, that “ *specie retinendæ dignitatis*,” cost his master, his glory, his happiness, and his provinces—and sunk his country into distresses, from which he is not yet recovered. “ *At vero dux Albanus ARMA & ULTIONEM, contendebat, unicum læsæ auctoritati principis remedium. Quippe ceteris artibus ac diuturna facilitate nihil aliud effectum, quam ut regi obedientia, rebellibus timor adimeretur. Postulasse principio Belgas, ut Hispanus è provincia miles excederet: id scilicet unum deesse constantes ad quietem populorum. Num propterea, impetrata externorum missione quievisse? An potius & confidentius efflagitasle, ut---clavo deturbaretur GRAN-*

VELLANUS.

* “ *Specie tuendi finium, jugum liberis provinciis meditatur.*”

ple of Great Britain would have been reduced to, had James the First and his family succeeded

VELLANUS. At *unius forte naufragio* complacatos fuisse ventos.---Quin immo ut *licentia* crescit facilius---homines à nostra facilitate securi---*libellis deridiculis, flagitiosis conspirationibus*---improbis palam carminibus---minis---*precibus armatis*---extorserent quod averent.---obstinatis *invetercunde legationibus Hispaniam FATIGARENT*---Hic quoque visum clementiæ principis aliqua indigna poscentibus indulgere. Enim vero quid ex illa indulgentia relatum, nisi ut votorum ubique compotes, non parendo: subditos sese obliviscerentur, obsequium dediscerent, atque exuta principis reverentia, communicata provinciarum defectione, tanquam culpæ societate tutiores, humana omnia contrectatæ semel libertati post haberent. Nunc vero non *unius civitatis*, sed *provinciarum consensu* peccatum esse in regem. Nec quia rebelles in presentia conquiescant, minus ferociæ animis inesse, resumpturos utique vires, ubi metum ultionis abjecerint. Sic ille PRONUS AD ASPERIORA, *Strada de bello Belgico*, lib. 6.

It is evident, that the British ministers have diligently studied *Strada* and the other authors who have transmitted to posterity the pleasing and instructive annals of Philippic policy, as every measure they have taken, is founded on a precedent set by that celebrated school of humanity.

Alva is the favourite master---on his conduct they keep their eyes steadily and reverently fixed, and it may truly be said---they follow him with no unequal steps. Great, good, and wise men! whom some future Puffendorf or Temple will duly celebrate.

" In 1564, GRANVILLE was removed from the council, to appease the people. Their joy was short lived; for as the same measures were pursued, it soon began to be said publicly, that though his body was removed from, his spirit still influenced the council. Upon application for a relaxation of the edicts, it was said, that moderation had only made matters worse, and the observation of them was again enjoined upon more severe penalties than before.

ceeded in their scheme of arbitrary power. Changing the word *Stuarts* for *parliament*, and

K 2

Britons

"At length an ASSOCIATION was entered into, for mutually defending each other. This being signed by above 400 persons of quality, who all protested, that they meant nothing but the honour of God, the glory of the king, and the good of their country, they met and PETITIONED, that the proclamation might be revoked: but the king would consent to no mitigation. Good advice was given to him. But the duke *D'Alva*'s violent counsel, WHO PROPOSED THE ENTIRE ABOLISHMENT OF THE LIBERTIES OF THE PROVINCES*, was most pleasing and followed. The cruel duke was sent into the *Low Countries* with a powerful army. The counts *D'Egmont* and *Horn* were immediately seized, on a pretence that they had, underhand, spirited up the people's *disaffection*. They were afterwards executed. All who had signed the ASSOCIATION or PETITION were declared guilty of † HIGH TREASON, and answerable for what had happened. A council called from its cruel proceedings, ‡ THE COUNCIL OF BLOOD, was erected for trying the accused, *from which there was no appeal.* (NOTE WELL) *Alva* himself tried the accused *in their own country*, where their friends and witnesses might attend them,—where the pains of death itself might be mitigated, by seeing with their dying eyes, that they expired beloved and lamented. Here, the disciples exceed their tutor. This is too great a consolation to be indulged to a colonist. He must be carried 3000 miles across the ocean—that he may not only die, but be insulted in his last moments, with the mockery of a trial where the clearest innocence stands no chance of acquittal, and with the formality of a sentence founded on a statute past before the colonies existed. On the approach of the army, the prince of *Orange* and other lords fled; and being summoned to appear before the council, in default

* "LAY THEM AT MY FEET."

[†] See General Gage's proclamation.

† Resolutions in parliament for trying colonists in England. Rhode-
Island Court. Late acts for Massachusetts-Bay.

Britons for Americans, the arguments of the illustrious patriots of those times, to whose virtues

fault thereof were condemned, and their estates confiscated. *Alva* treated all, the *innocent* and *guilty*, with such rigour, that it gave rise to the following saying of a *Spanish* officer — “*Hæretici fraxerunt templæ; boni nihil faxerunt contra: ERGO omnes debent patibulari.*”

Puffendorf's introduction—Art. “*Spain*” and “*the United Provinces*.³”

Sir *William Temple's* account of the disturbances in the *Low Countries* agrees exactly with the foregoing extracted out of *Puffendorf*, by which it will appear with what a surprising exactness of resemblance the affairs of the colonies have been carried on by administration.

“ The war with *France* being concluded, it was resolved to keep up the troops in these provinces, and that the states should support them, which by a long course of war was grown customary.” When *Philip* would have put *Spanish* garrisons into some of their towns; and for the sake of their admitting them quietly, gave the command to the Prince of *Orange* and Count *Egmont*: they told him plainly, “ That all the brave stands they had made against the power of *France*, availed them but little, if they must at last be enslaved by another foreign power. *Puffendorf*. “ The hatred of the people, the insolence of the troops, with the charge of their support, made them looked upon by the inhabitants in general, as the *instruments of their oppression and slavery, and not of their defence*, when a general peace had left them no enemies: And therefore the states began here their complaints, with a general consent and passion of all the nobles, as well as towns and country. And upon the delays that were contrived or fell in, the states first refused to raise any more monies either for the *Spaniards* pay, or their own standing troops; and the people ran into so great *despair*, that in *Zealand* they absolutely gave over the working at their dikes, **SUFFERING THE SEA TO GAIN EVERY TIDE UPON THE COUNTRY**, and resolving, as they said, rather to be devoured by that element,

virtues their descendants owe every blessing they now enjoy, apply with inexpressible force
and

element, than by the *Spanish* soldiers; so that at last the king consented to their removal. Another grievance was the appointment of *new judges**, and those absolutely depending on the king, &c."

"GRANVILLE strained up to the highest his master's authority and the execution of his commands, while the provinces were resolute to protect the liberties of their country, against the admission of this NEW AND ARBITRARY JUDICATURE, UNKNOWN TO ALL ANTIENT LAWS AND CUSTOMS OF THEIR COUNTRY. The king at last consented to GRANVILLE's recess. Then all noise of discontent and tumult was *appeased*. But quickly after the same councils were resumed. The disturbances then grew greater than before. But by the prudence and moderation of the duchess of *Parma*, the governess, the whole estate of the provinces was restored to its former peace. This duchess, and the duke of *Feria*, one of the chief ministers in *Spain*, thought and advised, that the THEN PRESENT PEACE OF THE PROVINCES OUGHT NOT TO BE INVADED BY NEW OCCASIONS, nor the royal authority lessened, by the king being made a party in a war upon his subjects. But the king was immovable; he dispatched *Alva* into the Low Country at the head of ten thousand veteran *Spanish* and *Italian* troops, under the command of the best officers, which the wars of *Charles* the Fifth, or *Philip* the Second had bred up in *Europe*; which, with two thousand more in the provinces, under the command of so old and renowned a general as the duke of *Alva*, made up a force, which nothing in the *Low Countries* could look in the face with other eyes, than of astonishment, submission, or despair. This power was for the assistance of the governess, the execution of the laws, the suppressing and punishing all who had been authors or fomentors of the late disturbances †. On his arrival

* Admiralty courts. *Rhode-Island* court, for enforcing the statute of 35 Henry 8. Act for regulating the government of *Massachusetts-Bay*. Act for administration of justice, &c.

† See speeches in parliament, and preambles to the late acts.

and appositeness, in maintenance of our cause, and in refutation of the pretensions set up by their

arrival the governess having obtained leave of the king, retired out of the province. The duke of *Alva* was invested in the government, *with powers never before given to any governor.* A council, called THE COUNCIL OF BLOOD*, was erected for the trial of all crimes committed *against the king's authority.* The towns stomached the BREACH OF THEIR CHARTERS, the people OF THEIR LIBERTIES, the knights of the golden fleece the CHARTERS OF THEIR ORDER, by these NEW AND ODIOUS COURTS OF JUDICATURE; all complain of the DISUSE OF THE STATES†, of the INTRODUCTION OF ARMIES, but all in vain. The king was constant to what he had determined. *Alva* was in his nature *cruel and inexorable.* The new army was fierce and brave, and *desirous of nothing so much as a rebellion in the country.* The people were enraged, but awed and unheaded. All was SEIZURE and PROCESS;—CONFISCATION and IMPRISONMENT;—BLOOD and HORROR—INSOLENCE and DEJECTION;—PUNISHMENTS executed, and meditated REVENGE. The smaller branches were lopt off apace; the great ones were longer a hewing down. Counts *Egmont* and *Horn* lasted several months; but at length, in spite of *all their services to Charles the Fifth and to Philip,* as well as of their new merits in quieting of the provinces, and of so great supplications and intercessions as were made in their favour, both in *Spain* and *Flanders,* they were publicly beheaded at *Brussels,* which seemed to break all patience in the people; and by their end to give those commotions a beginning, which cost *Europe* so much blood, and *Spain* a great part of the Low Country provinces. The war begun, *Alva* had at first great success. Moved with no rumors, terrified with no threats from *a broken and unarmed people,* and thinking no measures or forms were any more necessary to be observed in the provinces; he pretends greater sums are necessary for the pay and reward of his *victorious troops* than were ANNUALLY GRANTED UPON THE KING'S REQUEST BY

* See note in page 75.

† Frequent Dissolution of assemblies—and their total uselessness, if parliament taxes us.

their too forgetful posterity, over their unhappy colonists. Confiding in the undeniable truth

BY THE STATES OF THE PROVINCES : (Note. Here our ministers have again improved upon Philip's; for they have taxed us, without making requests.) * And therefore demands a general tax of the hundredth part of every man's estate, to be raised at once: and for the future, the twentieth of all immoveable, and the eighteenth of all that was sold. The states with much reluctance consent to the first, as a thing that ended at once. They PETITION the king, BUT WITHOUT REDRESS; draw out the year in contests, sometimes stomachful, sometimes humble with the governor: till the duke, impatient of delay, causes the edict, WITHOUT CONSENT OF THE STATES, to be published. The people REFUSED TO PAY; the SOLDIERS begin to LEVY BY FORCE; the TOWNSMEN ALL SHUT UP THEIR SHOPS; the PEOPLE IN THE COUNTRY FORBEAR THE MARKET; so as not so much as bread and meat is to be bought in the town. The duke is enraged; calls the soldiers to arms; and commands several of the inhabitants, WHO REFUSED THE PAYMENTS, to be hanged that very night UPON THEIR SIGN POSTS; which moves not the obstinacy of the people. AND NOW THE OFFICERS AND THE GUARDS ARE READY TO BEGIN THE EXECUTIONS, when news comes to town of the taking of the Briel, by the Gueſes †, and of the expectation

* Another advantage the British ministers have over the Spaniſh in depth of policy, is very remarkable. Spain was a great empire. The Low Countries a mere speck, compared with it. Spain was not a maritime state that depended upon them for the supply of her revenue. Had they been sunk in the sea, she would scarcely have felt the loss. Her prospect of success was almost certain. France, her then inveterate enemy, exhausted by a civil war and divided into two powerful parties. Every circumstance is directly the reverse to Great-Britain in her present contest with the colonies. "Siquidem verissimum est, ignem tectis injicere, et injecto spatiū modumque statuere, non esse in ejusdem manu." STRADA, lib. 7.

* Beggars—They were called so in contempt, when they petitioned. The people thereupon assumed that name, perhaps to keep up the memory of an insult occasioned by their loyalty.

The whole country of the seven United Provinces is not as large as one half of Pennsylvania; and when they began their contest with Philip the Second for their liberty, contained about as many inhabitants as are now in the province of Massachusetts-Bay. Philip's empire then comprehended in Europe

truth of this single position, that, “ to live by one
peculation that had given of a sudden revolt in the province
of Holland.

“ This unexpected blow STRUCK the duke of Alva, and foreseeing the consequences of it, because he knew the stubble was dry, and now he found the fire was fallen in, he thought it an ill time to make an end of the tragedy in Brabant, whilst a new scene was opened in Holland; and so giving over for the present his TAXES and EXECUTIONS, applies his thoughts to the suppression of this new enemy that broke in upon him from the sea. And now began that great commotion in the *Low Countries*, which never ended but in the loss of those provinces, when the death of the royal government gave life to a new commonwealth.”

Observat. upon the UNITED PROVINCES of the Netherlands by Sir William Temple.

Philip and his junto of cabinet ministers thought themselves no doubt very wise, and politic as so many *Machiavels*. But what says, and will say mankind as long as the memory of those events is preserved? That their counsels were despicable, their motives detestable, and their minds like those described by the bishop of Lerida, that exactly resembled the horns of the cows in his country---LITTLE, “ HARD, and CROOKED.”

and

Europe, all Spain and Portugal, the two Sicilies, and such provinces of the *Low Countries* as adhered to him,—many islands of importance in the Mediterranean—the Milanese and many other very valuable territories in Italy and elsewhere.—In Africa and Asia, all the dominions belonging to Spain and Portugal—in America the immense countries subject to those two kingdoms, with all their treasures and yet unexhausted mines, and the Spanish West-Indies. His armies were numerous and veteran, excellently officered, and commanded by the most renowned generals. So great was their force, that during the wars in the *Low Countries*, his commander in chief, the prince of Parma, marched twice into France, and obliged that great general and glorious king, Henry the fourth, to raise at one time the siege of Paris and at another, that of Roan. So considerable was the naval power of Philip, that in the midst of the same wars, he fitted out his dreadful *armada* to invade England. Yet seven little provinces, or countries, as we should call them, inspired by one generous resolution—“ to die free, rather than to live slaves,” not only baffled, but brought down into the dust, that enormous power, that had contended for universal empire, and for half a century; was the terror of the world. Such an amazing change indeed took place, that those provinces afterwards actually PROTECTED Spain against the power of France.

one man's * will became the cause of all men's misery," they generously suffered.—And the worthy bishop before mentioned, who, for strenuously asserting the principles of the Revolution, received the unusual honour of being recommended by a HOUSE OF COMMONS to the sovereign for preferment, has justly observed, that "*misery is the same whether it comes from the hands of MANY or of ONE.*"

"IT could not appear *tolerable* to him (meaning Mr. Hooker, author of the Ecclesiastical Policy) to lodge in the governors of *any society* an UNLIMITED AUTHORITY, to annul and alter the constitution of the government, as they should see fit, and to leave to the governed the privilege *only* of ABSOLUTE SUBJECTION in *all such alterations* †; or to use the parliamentary phrase, "*in all cases whatsoever.*"

[FROM what source can Great-Britain derive a single reason to support her claim to such an enormous power? That it is consistent with the laws of *nature*, no reasonable man will pretend. That it contradicts the precepts of
L Christianity,

* *Hooker.* "For a man to be *tenant at will* of his liberty, I can never agree to it. It is a *tenure*, not to be found in all *Littleton.*" Speech of Sir Edward Coke.

"*Etiam si dominus non sit molestus, tamen miserrimum est, posse si velit.*" CICERO.

————— "The free
Know no gentle tyranny." ROWE.

† HOADLY's disc. on government.

Christianity, is evident. For she strives to force upon us, terms, which she would judge to be intolerably severe and cruel, if imposed on herself. “*Virtual representation*” is too ridiculous to be regarded. *The necessity of a supreme sovereign legislature internally superintending the whole empire*, is a notion equally unjust and dangerous. “The pretence (says Mr. Justice Blackstone, speaking of James the First’s reign) for which arbitrary measures was no other than the TYRANT’S PLEA of the NECESSITY OF UNLIMITED POWERS, works of evident utility to the * public, the supreme reason

* With such smooth words may the most dreadful designs be glossed over. “There are some men who call evil, good, and bitter, sweet.—*Justice*, is now called popularity and faction.” Parl. hist. 8. 193.

“A man shall not unprofitably spend his contemplation, that upon this occasion considers the method of GOD’s justice (a method terribly remarkable in many passages, and upon many persons, which we shall be compelled to remember in this discourse) that the same principles, and the same application of those principles, should be used to the wresting all sovereign power from the crown, which the crown had a little before made use of for the extending its authority and power, *beyond its bounds*, to the prejudice of the just rights of the subject. A SUPPOSED NECESSITY was then thought GROUND ENOUGH to create a power, and A BARE AVERMENT OF THAT NECESSITY to beget a practice to impose what tax THEY THOUGHT CONVENIENT upon the subject, by writs of ship-money never before known; and a supposed necessity now, and a bare averment of that necessity, is as confidently, and more fatally, concluded a good ground to exclude the crown from the use of any power, by an ordinance

reason above all reasons, which is the salvation of the king's lands and people." This was not the doctrine of James only. His son unhappily inherited it from him. On this flimsy foundation was built the claim of *ship money*, &c. Nor were there wanting men, who could argue, from the courtly text, that parliaments were too stupid or too factious to grant money to the crown, when it was their interest and their duty to do so. This argument, however, was fully refuted, and slept above a century in proper contempt, till the posterity of those who had overthrown it, thought fit to revive the exploded absurdity. Trifling as the pretence was, yet it might much more properly be urged in favour of a *single person*, than of a *multitude*. The counsels of a monarch may be more secret. His measures more quick. In passing an act of parliament for all the colonies, as many men are consulted, if not more, than need be consulted, in obtaining the assent of every legislature on the continent. If it is a good argument for parliaments, it is a better against them. It therefore proves nothing but its own futility. The *supposed advantages* of such a power could never be attained but by the destruction

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nance never before heard of, and the same maxim of "salus populi suprema lex," which had been used to the infringing the liberty of the one, made use of for destroying the rights of the other."

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Lord Clarendon's hist. b. 5. p. 54.

of * *real benefits*, evidenced by facts to exist without it. The *Swiss Cantons*, and the *United Provinces*, are combinations of independent states. The voice of each must be given. The instance of these colonies may be added : for stating the case, that no act of internal legislation over them had ever been past by *Great-Britain*, her wisest statesmen would be perplexed to shew, that she or the colonies would have been less flourishing than they now are. What benefits such a power may produce hereafter, time will discover. But the *colonies are not dependent on Great-Britain*, it is said, if she has not a supreme unlimited legislature over them. “ I would ask these *loyal* subjects of the king (says the author of a celebrated invective against us) † what king it is, they *profess* themselves to be *loyal* subjects of? It cannot be his present most gracious majesty, *George the Third*, king of *Great-Britain*, for his

* Thus the patriots of *Charles's days* argued---“ It is not, that *ship-money* hath been levied against us, but it is, that thereby *ship-money* is *claimed*, which is the gift and **EARNEST PENNY OF ALL WE HAVE**: it is not, that our persons have been imprisoned, for the payment of *ship-money*, but that our **PERSONS AND LIVES** are, upon the *same ground of law*, delivered up to *will and pleasure*. It is, that our **BIRTHRIGHT** is destroyed, and that there hath been an endeavour to reduce us to a *lower state than villainage*: The lord might tax his *villain de haut et de basse*, might imprison him, but his **LIFE was his own**; THE **LAW SECURED HIM THAT.**” Lord Clarendon.

† See note on these words “ Therefore a power of regulating our trade, involves not in it the idea of a supreme legislature over us.” Page 120.

his title is founded on *an act of parliament*, and they will not surely acknowledge that parliament can give them a king, which is of all *others*, the highest act of sovereignty, when they deny it to have power to tax or bind them in any other case; and I do not *recollect* that there is any act of assembly, in any of the colonies, for settling the crown upon king *William* or the illustrious house of *Hanover**." "Curious reafoning

* "The *controversy* between *Great-Britain* and her colonies reviewed." The learned gentleman who wrote this piece, has thought proper to quit his argument, step out of his way, personally abuse, and severely attack the writer of the "Farmer's Letters." His principal objections are the following, and the answers here given may perhaps be sufficient to shew with what force his objections are generally urged. 1st. He says, "the writer of the letters tells us, that the drawbacks which are allowed on some articles upon their exportation from *England* amount to more money than all the duties together which are laid upon them on their arrival in the colonies will produce. I believe it is the first time that the colonies of any state have complained of the injustice of the mother country in laying taxes upon them, which were not *sufficiently heavy*, nor was it ever before discovered that the proper means to redress the grievances of any people, were to *increase their taxes*." Page 16. *Answer.* The truth of the assertion in the letters is not denied. It is assumed, by the author of the "controversy," as the foundation of his argument. If, then, parliament would have raised *more* money, "by stopping the drawbacks, than by laying the duties to be paid in the colonies," *why* were they laid? From respect for parliament, it must be supposed, they were laid for *some* purpose. It was not for the sake of the money. For what then? To establish a PRECEDENT for *taxing* the colonies, says the writer of the letters. The author of the

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reasoning this." * It is to be wished the gentleman had " *recollected*" that without any such

controversy does not deny it ; but enters into a dissertation upon the *more* and the *less*, which is not the point in question. 2dly. The writer of the letters says, that, an *act of parliament* commanding us to do a certain thing, if it has any validity, is a *tax* upon us, for the *expence* * that accrues in complying with it." In reply to this the author of " the controversy" enumerates many instances of sovereignty *subjecting the colonies to expence*, which he supposes may be legally excercised WITHIN the colonies " BY ACT OF PARLIAMENT." Pages 23, 24. *Answer.* The propriety of this supposition is denied, and remains to be proved. " Absurdities and contradictions" are plentifully attributed to the writer of the letters, because he will not acknowledge, that the power of parliament " to regulate trade, and preserve the connection of the whole empire in due order," involves in it a power to " tax the colonies," or " to put them to *any expence*," parliament *shall please*. A person of such sagacity, as the author of the controversy, might plainly have perceived, if his resentment had not prejudiced his candour, that the writer of the letters was unwilling to give up any point, which he *then* thought essential to the freedom and welfare of his country, and at the same time was † unwilling to propose

* Id. p. 17.

* This sentence related to the dissolution of the assembly of New-York, for not complying with the act of parliament for not supplying the troops. Last session of parliament an act was passed for the more commodious quartering of the troops in America. It is not yet come over; but deserves the attention of the colonists, even if it has not the remarkable features, that distinguish the productions of the last session.

† If any person shall imagine that he discovers, in these letters, the least dislike of the dependence of these colonies on Great-Britain, I beg that such person will not form any judgement on particular expressions, but will consider the tenor of all the letters taken together. In that case, I flatter myself, that every unprejudiced reader will be convinced, that the true interests of Great-Britain are as dear to me, as they ought to be to every good subject.

" If I am an enthusiast in anything, it is in my zeal for the perpetual dependence of these colonies on their mother country. -- A dependence founded on mutual benefits, the continuance of which can be secured only by mutual affections.

such “act of assembly” none of the colonists ever rebelled. What *act of parliament* is here

propose any new subject of dispute. Justly has the author of the controversy observed—that “it would be endless to trace this doctrine of TAXES THROUGH ALL the

affections. Therefore it is, that with extreme apprehension I view the smallest seeds of discontent, which are unwarily scattered abroad. *Fifty or sixty years* will make astonishing alterations in these colonies; and this consideration should render it the business of Great-Britain more and more to cultivate our good disposition towards her: But the misfortune is, that those great men, who are wrestling for power at home, think themselves very slightly interested in the prosperity of their country *fifty or sixty years hence*, but are deeply concerned in blowing up a popular clamour for supposed immediate advantages.

“For my part, I regard Great-Britain as a bulwark, happily fixed between these colonies and the powerful nations of Europe. That kingdom remaining safe, we, under its protection, enjoying peace, may diffuse the blessings of religion, science, and liberty, through remote wildernesses. It is therefore uncontestedly our duty, and our interest, to support the strength of Great-Britain. When confiding in that strength, she begins to forget from whence it arose, it will be an easy thing to shew the source. She may readily be reminded of the loud alarm spread among her merchants and tradesmen, by the universal association of these colonies, at the time of the stamp-*act*, not to import any of her MANUFACTURES.

“In the year 1718, the Russians and Swedes entered into an agreement not to suffer Great-Britain to export any NAVAL STORES from their dominions but in Russian or Swedish ships, and at their own prices. Great-Britain was distressed. Pitch and tar rose to three pounds a barrel. At length she thought of getting these articles from the colonies: and the attempt succeeding, they fell down to fifteen shillings. In the year 1756, Great-Britain was threatened with an invasion. An easterly wind blowing for six weeks, she could not man her fleet, and the whole nation was thrown into the utmost consternation. The wind changed. The American ships arrived. The fleet sailed in ten or fifteen days. There are some other reflections on this subject, worthy of the most deliberate attention of the British parliament; but they are of such a NATURE, that I do not chuse to mention them publickly. I thought it my duty, in the year 1765, while the stamp-*act* was in suspence, to write my sentiments to a gentleman of great influence at home, who afterwards distinguished himself, by espousing our cause, in the debates concerning the repeal of that *act*. ”

FARMER’S LETTER, xii. page 100.
If the author of “the controversy” had seen the letter above referred to, he would have found, that, the difference between the PREROGATIVE in Great-Britain and in America, and the exercise of INTERNAL LEGISLATION by parliament over the colonies, with some other points therein mentioned, were represented in the strongest terms the writer of the letters could use, as unjust, and certainly tending in a few years to produce the deepest discontents. The time is at length come, when silence in America on these subjects would be stupid or criminal.

here meant? Surely not the 11th of Henry the Seventh, chapter the 1st, in favour of a king
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THE CONSEQUENCES." Page 23. 3dly. The writer of the letters says, "we are as much dependent on Great-Britain, as a perfectly free people can be on another." On this the author of the controversy kindly observes, that —" it is a pity the learned editor (the *English* editor, it is supposed) has not given the public a dissertation on that most ingenious and instructive passage." Page 25. *Answer.* American understandings discover no inconsistency in the idea of "a state being dependent, and yet perfectly free," and their temper is so moderate that they would be content with that degree of freedom, which is compatible with a dependance. If the proposition puzzles *British* understandings, it is presumed to be, because *Britons* will not give themselves the trouble to think of any dependance, but of *such*, as is destructive of *all* freedom; though they themselves are dependent in some measure on others. 4thly. The writer of the letters says "if money be raised upon us by *others* without our consent, for our defence, those who are the judges in levying it, must also be the judges in applying it. [OF CONSEQUENCE, the money, *said* to be taken from us for our defence, *may be employed*, to our *injury*. We may be * chained in by a line of fortifications—obliged to pay for the building and maintaining them---and be told that they are for our defence] With what

* The probability of this measure taking place, is confirmed by the CANADA bill, a political device so extraordinary, as to excite surprize even in those colonists who live in the year 1774. By this bill, it is said, the legislative power is lodged in the governor and a few men, not less than 17 nor more than 23, appointed and removeable by the crown; and the government becomes wholly military.—Trials by jury are abolished, though multitudes of *English* subjects settled there on the encouragement given by the king's proclamation in 1763—The French laws are restored, and ALL THE COUNTRY ON THE BACK OF THESE COLONIES is added to Canada, and PUT UNDER THE SAME MILITARY GOVERNMENT. This is indeed to be "chained in." Nothing is wanting to complete the plan, but our money, to defray the expence of erecting strong holds among our woods and mountains, and to bribe our Indians; and then the expression of "beating our swords into ploughshares" will be reversed in an extraordinary manner; for "our plough-shares" will furnish the very "swords" that are to cut our own throats.

de facto. Probably the 12th and 13th of William the 3d, chapter the 2d, “for the fur-

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what face can we dispute the fact after having granted that those who *apply* the money, had a right to *levy* it? For surely it is much easier for their wisdom to understand how to apply it in the best manner than how to levy it in the best manner. Besides the right of levying is of infinitely more consequence than *that of applying*. The people of *England*, who would burst out into fury if the crown should attempt to *levy* money by its own authority, have always assigned to the crown the *application* of money.”

From the words relating to “*application*” the author of “*the controversy*” deduces a “*proof*,” that the writer of the letters is very deficient in “*his knowledge of the constitution*” * &c. *Answer.* Is this treatment generous? In such questions ought the attack to be turned from the *cause* to the *man*? The writer of the letters pretends not to be distinguished, as a “*critic on government*” nor for “*justness or elegance of composition* †.” Surely, even the author of “*the controversy*” must now be convinced of his aversion to writing, as that performance, with all “*the justness and elegance of its composition, knowledge of the subject handled, and constitutional learning displayed in it*,” and employed to pull to pieces the reputation of the writer of the letters, has not rouzed him during so many years since its publication, to make a single effort in vindication of his character. Was it imagined, that every objection was just, because not replied to? Many reasons, besides a fear of encountering objections, may prevent an answer. In truth, he cannot be called a *volunteer author*.—He *never DID*, and *never DARED* to write, but *when* the honour or interest of his country was assaulted—when *duty* compelled every one to contribute what assistance he could in her defence—and when he hoped, the cause would draw some kind of a veil over his defects. He expected, he might escape as the *Spartan youth* did, with some slight censure for en-

gaging

* Page 25.

† Pages 22 and 25.

"ther limitation of the crown &c." is intended. And, is it imagined that the words "dominions and territories thereunto belonging"

gaging *improperly armed*, but that his *motive* would excuse him from a severe one. How well founded the present reproach is, will now be considered. One would imagine, that a man of common sense, on reading the foregoing extract from the letters, would understand the writer plainly to mean by "*levying*," the power of "*taxing*" — and by "*applying*," the power of "*employing*" the money raised by taxing; or in other terms, the *actual expenditure* of it. This meaning is evident --the conclusion being *express*, that "*if others may be judges in applying money, OF CONSEQUENCE it may be employed to our injury*"---and then follow some *instances*, in which it "*may be so employed*." All this is very clear. How then does the very ingenious gentleman open his way to the writer of the letters to give him this violent blow? By a dexterity worthy of imitation---*if justifiable*. He *leaves out* of his quotation, *all the words* inclosed within the last crotchet, beginning at the words "*OF CONSEQUENCE*" and ending at the words "*our defence, that shewed beyond a possibility of doubt in what sense the word "applying" was used---takes no notice of the omission---imposes another sense on the word---and then insults, may it be said, over the supposed mistake of saying, "that the people of England have always assigned to the crown the application of money."*

What sense *he or others* may assign to the word "*application*" is not the point: but whether the word, *taken in that sense* which the writer of the letters *expressly annexed* to it, is used *with propriety* by him, or whether it is used *in such a manner*, as to "*prove he is very deficient in his knowledge of the constitution?*" By *that word*, as he defines it, positively as language can declare any meaning, he intends, *the actual expenditure and "employment"* of money.—And is the reader to be tricked out of *that definition*, and *another sense* shuffled in, merely to impeach a man's character by flight of pen?

Has

ing" in that statute, form his majesty's title to the sovereignty of these colonies? The
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Has not the constitution “ assigned to the crown the actual expenditure and employment of money ?” Is not this power part of the executive ? Does not Mr. Justice Blackstone mention this power to shew the vast influence of the crown ?—He particularly takes notice of it with respect to the army—in these expressions—“ paid indeed ultimately by the people, but immediately by the crown ; raised by the crown ; officered by the crown ; commanded by the crown.” *

Is not the word "application" used here too, not only properly, *as defined*, but properly, *in a constitutional sense*?

True it is, that the word is sometimes used as synonymous with *appropriation*, though this latter seems to be the fittest word to mean the *designation* of money to particular purposes in acts of parliament. Could it be possible, that the author of “the controversy” should imagine, the writer of the letters could be ignorant of such designation or appropriation of money by parliament, when one can scarcely open a book of statutes, without observing them? Parliament may accommodate grants of money to public necessities—and may call officers of the crown to account for money, but these powers no more prove the *actual expenditure and employment* of money to belong to parliament, than the power of calling officers of the crown to account for injurious leagues, or declarations of war, proves the power of parliament to make leagues or to declare war. Besides, it being contended against the colonies, that the “*sovereign power*” is lodged in king, lords, and commons, the same persons may *tax* and *expend*, to what excess and in what manner **THEY PLEASE**, while the colonies will have NO KIND OF **CONTROUL** over them: And, that such an *union* of those powers is unconstitutional and dangerous to the colonies in extreme, was the point the writer of the letter offensively ventured to insist on.

Exactly

* 1 Blackstone 330.

omission of them might have looked odd; but what force is added by their insertion? The settlement of the crown of *England* includes

Exactly in the sense here contended for, are the words “appropriation” and “application” used in some of the best authorities. Bishop *Ellis* in his tracts on liberty, page 31, says—“The parliament, at present, in granting money does for the most part appropriate it to particular services, whereby the application of it is more effectually secured.” “When any aids are given, the commons only do judge of the necessities of the crown, which cannot be otherwise made manifest to them, than by inquiring, how the money which hath been granted, and revenue of the crown, is expended and applied *.” “Out of the aids given by parliament, (which by the law of *England* are appropriated, and ought to have been employed in the common profit of the whole realm) many large sums of money, during the times of such heavy taxes upon the people, have been diverted under the head of secret services, and for salaries, bounties and pensions, † &c.”

Some other unfairnesses there are in this famous piece, that need only be viewed, to be refuted; but of which, it may be said, if a “precedent” established by the respectable gentleman himself, can procure pardon for the expression, that “they are not entitled to notice.” How could he venture to assert as he does, that—“the purpose of the letters was to excite resentment in the colonies against their parent country and to push them on to a separation from her.” The letters prove the contrary. Few men have expresst a warmer zeal for the connexion, than the writer of them! Yet his reputation is to be attacked on every account, and a charge even of disloyalty directly levelled against him. The author is welcome to take what other licenses he pleases in his apprehensions of the writer; but he ought not to have denied his integrity. Their intentions must stand the test of a tribunal, that decides for eternity. May they then appear equally pure.

True

* Words of the *Commons* at a conference with the *Lords*. *Parl. Hist.*
† Address of the house of *Commons* to queen *Anne*. *Parl. Hist.*

cludes the settlement of the colonies. King *William* is mentioned—and will the gentleman venture to say, that *William* was not king of *England* and sovereign of these colonies, before his title was “declared” or “recognized” by “an act of parliament?” The gentleman slurs over this case. His zeal for the “illustrious house of *Hanover*” would be little gratified, by inferring, that because the two houses, with the consent of the nation, made a king, *therefore* the two houses can make laws. Yet that conclusion would be as justifiable as this—that the assent of the colonies to an election of a king by the two houses, or to the limitation of the crown by act of parliament, proves a right in parliament to bind the colonies by statutes “in all cases whatsoever.” In such great points, the conduct of a people is influenced *solely* by a regard for their freedom and happiness. The colonies have no other head than the king of *England*. The person, who by the laws of that realm is king of that realm, is our king.

A DE-

True indeed are those words of Lord *Clarendon*.—“Let no honest man that is once entered into the lists, think, he can by any skill or comportment prevent these conflicts and assaults—but let him look upon it as a purgatory he is *unavoidably* to pass through; and constantly performing the duties of *justice, integrity and uprightness*, depend upon *PROVIDENCE*, and time, for a vindication.”

* This word “dependance” as applied to the states connected with *England*, seems to be a new one. It appears to have been introduced into the language of the

A DEPENDANCE * on the crown and PARLIAMENT of *Great Britain*, is a novelty—a dreadful novelty. It may be compared to the engine invented by the *Greeks* for the destruction of *Troy**. It is full of armed enemies, and the walls of the constitution must be thrown down, before it can be introduced among us.

WHEN it is considered that the king as king of *England* has a power in *making* laws—the power of *executing* them—of finally determining on *appeals*—of calling upon us for *supplies* in times of war or any emergency—that every branch of the *prerogative* binds us, as the subjects are bound thereby in *England*—and that all our intercourse with *foreigners* is regulated by parliament.—Colonists may “surely” be acknowledged to speak with truth, and precision, in answer to the “elegantly” express question—“What king it is,” &c.

law, by the commonwealth act of 1659. A “dependance on parliament” is still more modern. A people cannot be too cautious in guarding against such innovations. “The credentials of the imperial ambassadors to the states of *Holland*, were directed “TO OUR FAITHFUL AND BELOVED.” The words seem to be very kind, but the cautious states discovered that this was the stile of the imperial chancery in writing to the *vassals of the empire*. The question was, whether the credentials should be opened? And it was urged, that a solemn embassy ought not to be disappointed, for a few trifling words. But the states resolved to send them back unopened, which they did. Other credentials were then sent, with a proper direction; and the ambassadors were well received.” Arcana imp. det. p. 196.

* 7 Co. 18.

&c. by saying that “ his most gracious majesty George the Third” is the king of *England*, and therefore, “ *the king*” they—profess themselves to be “ *loyal subjects of*.”

WE are aware of the objection, that “ if the king of *England* is therefore king of the colonies, they are subject to the general legislative authority of that kingdom.” The premises by no means warrant this conclusion. It is built on a mere supposition, that the colonies are thereby acknowledged to be *within the realm*, and on an incantation expected to be wrought by some magic force in those woods. To be subordinately connected with *England*, the colonies *have contracted*. To be subject to the general legislative authority of that kingdom, they *never contracted*. Such a power as may be necessary to *preserve this connection* she has. The authority of the *sovereign*, and the authority of controlling our intercourse with *foreign nations* form that power. *Such a power* leaves the colonies free. But a general legislative power is not a power to preserve that connection, but to distress and enslave them. If the first power cannot subsist without the last, she has no right even to the first—the colonies were deceived in their contract—and the power must be unjust and illegal; for God has given to them *a better right* to preserve their liberty, than to her to destroy it. In other words, supposing king, lords and commons, acting in parliament, constitute

stitute a *sovereignty* over the colonies, is that sovereignty constitutionally *absolute* or *limited*? That states without freedom should by *principle* grow out of a free state, is as impossible, as that sparrows should be produced from the eggs of an eagle. The sovereignty over the colonies must be * *limited*. *Hesiod* long since said, “ half is *better* than the whole;” and the saying never was more justly applicable, than on the present occasion. Had the unhappy *Charles* remembered and regarded it, his private virtues might long have adorned a throne, from which his public measures precipitated him in blood. To argue on this subject from other instances of parliamentary power, is shifting the ground. The connexion of the colonies with *England*, is a point of an unprecedented and delicate nature. It can be compared to no other case; and to receive a just determination, it must be considered with reference to its own peculiar circumstances †. The common law extends to colo-

* “ *Nec REGIBUS infinita aut libera potestas*, was the constitution of our *German* ancestors on the continent, and this is not only consonant to the PRINCIPLES of NATURE, of LIBERTY, of REASON, and of SOCIETY, but has always been esteemed an express part of the COMMON LAW of *England*, even when prerogative was at the highest.”

1 Black 233.

† The learned Judge [in Vol. I. pag. 107.] says this country was not “uninhabited when discovered and planted by the English, &c. but ought to be considered as a conquered, ceded, or infidel country. Our American plantations are prin-

colonies; yet Mr. Justice *Blackstone* says,
“such parts of the law as are neither *necessary*
N nor

principally of this latter sort, being obtained in the last century, either by right of conquest and driving out the natives (with what natural justice, I shall not at present inquire) or by treaties: and therefore the common law of England, as such, has no allowance or authority there, they being *no part* of the mother country, but distinct (though dependent) dominions. They are subject however to the controul of the parliament.”

According to this doctrine, the colonists are considered in a legal view by the parent state, "as infidels or conquered people," not as her children with her consent establishing societies for her benefit. Though not a single man of the "infidels or conquered" people, should now be found to reside in each colony; yet a political contagion is communicated to *Englishmen in secula seculorum*, because Indians once fished in the rivers, and hunted in the woods. If this be their "condition," then according to the law laid down by the Judge, "they are subject not only to the controul of parliament, but the King may alter and impose what laws he pleases*."

It is not known what the learned Judge means by the word “*principally*.” Perhaps he alludes to the ill directed *humanity* and *justice* of the first settlers of some colonies, who purchased the lands from the natives, for valuable and satisfactory considerations. It was a very useless exercise of their virtues, for their posterity. If they had *by accident* settled an “*uninhabited*” country, the invaluable rights of the common law would have attended them ; but when they *dared* to obtain a settlement by *humanity* and *justice*, they *forfeited* all rights of the common law, to the latest succeeding ages. *Can this be law?* Every case quoted by the Judge, it is humbly apprehended, makes a distinction between states or societies composed of *English subjects*, and those composed of “*conquered*” people, &c. and that *this is the only distinction warrantable by those cases.*

That

* Blackstone 107 and the cases there cited.

* 1 Blackstone 107, and the cases there cited.

nor convenient for them, as the jurisdiction of the spiritual courts, &c. are therefore not in force."

That the *conquerors* should be considered as the *conquered*, the *expellers of the natives* as the *expelled natives*, and the *christian possessors and owners by fair purchases from those who had a right to sell*, as the *infidels no longer possessing or owning*, seems to involve a confusion of ideas, little agreeing with the strength of reason that informs the common law.

It is very remarkable, how our ablest antagonists are perplexed in framing their arguments against us. Even the learned Judge does not express himself with his usual perspicuity: but the want of it is well atoned, if we, colonists, can be thereby deprived of the benefits of the *common law*, and be absolutely subjected to the *king*; for these courtly tenets are the *only* consequences deducible from the curious argument that tends to involve these colonies in the misfortunes of "conquered, ceded, or infidel countries." The "controul of parliament" is asserted to be supreme, in every case. Whether the colonies were settled in "uninhabited countries," or in "conquered, ceded, or infidel countries," makes no difference as to that point.

Another learned gentleman has discovered, that we "are not entitled to as great a degree of freedom as *Ireland*." Why? "Because *Ireland* was a *conquered country*." This remark does not seem to remove the difficulty. Let us hear the point a little more explained. "*Ireland* it is true was *conquered*, but certain *concessions* were made to the people. These were the terms granted them, but *England* is obliged to keep no terms with the colonists." At every step these gentlemen take, those writers, who have contributed so much to the glory of their country, turn upon them, and directly oppose them. They at first shrink before these venerable advocates for liberty and humanity—but recollecting themselves, they distinguish and refine, in order to take away the substance of every argument, and to whittle down a *Hooker* and a *Locke* into a *Lestrange* and a *Filmer*. After taking these liberties, they at length grow bold enough to arraign the authority of any man, even Mr.

Locke

force." If even the COMMON LAW, in force within the realm of *England* when the colonists quitted it, is thus abridged by the peculiar circumstances of colonies, at least equally just, and constitutional is it, that the POWER OF MAKING NEW LAWS within the realm of *Eng-*

N 2 land,

Locke himself, if his writings cannot, by all this art, be turned to their purpose.

We need not be surprised after this, that every colonist, who ventures honestly to assert as well as he can the cause of his native land, should be treated with little respect. The colonies have always been on the *defensive*. IT IS HOPE'D THEY WILL ALWAYS CONTINUE so. But the author of "the controversy" charges them with great cunning, a left handed wisdom, that must disgrace any people—because they have not resisted, in places where they were not immediately attacked. "It is the *artifice* of the managers, on the part of the colonies, to avoid general questions, and to keep back and conceal consequences, lest the unsuspecting people of *England* should too soon catch the alarm, and resolve to withstand their first attempts at independency *." That is—they have acted just as the "unsuspecting people of *England*" have done in their controversies with the crown. They confined themselves, from time to time, to a demand of redress for the injuries offered them. This behaviour of the colonists would, by some persons, be deemed modest and respectful. Now indeed the conduct of administration demonstrates to us, that we must enlarge our views, and endeavour to take a prospect of all the mischiefs necessarily attending a claim of boundless power with an unbounded inclination to exercise it. The gentleman may perhaps call for fire and faggots to extirpate our political heresy; but we trust, and trust firmly, that the sense and generosity of the good people of *England*, will discover and defeat the present plan against their liberties, as they have already so many other schemes of that tendency---that they will behold their dutiful children with compassionate love, and with just indignation those

* Pa. 15.

land, should be abridged with respect to colonies, by those peculiar circumstances *.

THE

those unrelenting enemies from whom *they* can expect no other favour, but that *England* “ shall be the last they will devour.”

* The author of the controversy, in page 31 of his work, argues thus concerning the legislative power of Great-Britain over the colonies. “ The lands in all the colonies having therefore been clearly shewn to be part of the dominions of Great-Britain, and the possessors of them to hold them under authorities and titles derived from the *British* state, Mr. *Locke* would require no other proof of the right of the legislative power of Great-Britain to the obedience of the possessors of those lands; for speaking of the manner by which a man tacitly makes himself a subject of any country or government, he says,”

“ It is commonly supposed, that a father could oblige his posterity to that government of which he himself was a subject, and that his compact held them; whereas it being only a necessary condition annexed to the land, and the inheritance of an estate, which is under that government, reaches only those who will take it on that condition, and so is no natural tie or engagement, but a voluntary submission; for every man’s children being by nature as free as himself, or any of his ancestors ever were, may, whilst they are in that freedom, choose what society they will join themselves to, what commonwealth they will put themselves under; but if they will enjoy the inheritance of their ancestors, they must take it on the same terms their ancestors had it, and submit to all the conditions annexed to such a possession.” Whoever (says he in another place) by inheritance, purchase, permission, or otherways, enjoys any part of the lands so annexed to, and under the government of, that commonwealth, must take it with the condition it is under; that is, of submitting to the government of the commonwealth under whose jurisdiction it is, as far forth as any subject of it.” Page 31. The ingenuity of

THE laws of *England* with respect to prerogative, and in other instances, have accommodated

of the gentleman is here again remarkable. Mr. *Locke*, in his 8th chapter on civil government, “ Of the beginning of political societies,” immediately before the words abovementioned “ Whoever by inheritance,” &c. speaks of a man who “ unites his person which was before free to a society for the securing and regulating of property, and submits to the community those possessions which he has or shall acquire, that do not already belong to any other government.” These words the gentleman not thinking quite to his purpose *in this place*, separates from the words of his quotation, and so gives Mr. *Locke*’s conclusion without his premisses. However three pages after, he is so candid, as to give the premisses without the conclusion. How, or why? to support this most curious distinction--that Mr. *Locke*, in that celebrated part of his argument where speaking of “ government taking the property of subjects,” he says “ WHAT PROPERTY HAVE I IN THAT, WHICH ANOTHER MAY BY RIGHT TAKE FROM ME WHEN HE PLEASES,” * means no more than that the supreme legislative power has no right to take the property of others without their consent “ for the PRIVATE USE OR PURPOSE of the legislative.” So that according to this construction the constitution of a well established government, or the freedom of a people, depends not on the great right which GOD has given them “ of having a share in the government of themselves,” whereby their property is secured, but merely, on the “ purpose” to which the property taken from them without their consent is *applied* by those who thus take it. And yet this gentleman has severely attacked the writer of the letters, for using the word “ purpose” in a much *more confined* sense, in saying a “ tax is an imposition on the subject for the sole purpose OF LEVYING MONEY.”

Mr. *Locke*, in the preceding chapter, speaking of monarchy says, “ that absolute power purifies not mens bloods. For if it be asked what security or fence arises in such

modated themselves, without alteration by statutes, to a change of circumstances, the welfare

Such a state, against the violence and oppression of the absolute ruler? the very question can scarce be borne. They are ready to tell you it deserves death, only to ask after safety. Betwixt subject and subject they will grant there must be measures, laws and judges for their mutual peace and security: But as for the ruler, *he ought to be absolute, and is above all such circumstances;* because he has power to do more hurt and wrong, 'tis right when he does it. To ask how you can be guarded from harm or injury on that side where the strongest hand is to do it, is presently the voice of *faction and rebellion.*" But here our opponent may come in with another distinction. "Mr. Locke speaks here of an *absolute ruler*, not of *absolute rulers*. Lilly proves there is the singular and plural number. A power that Mr. Locke would have held illegal in a *Pisistratus* or a *Stuart*, he would have held legal in the *four hundred of Athens*, or the *parliament of Great Britain.*" Let the distinction be allowed its due weight. Can it be believed that such a friend to mankind, as Mr. Locke was, could ever think *absolute dominion** just or legal? Would not such a sentiment directly oppose those principles, his benevolence induced him to take so much pains to vindicate and establish? Would the sound of the words—"dependance—" "subordination—" "within the realm—" "part of the dominions—" &c. have convinced him, that it was "the indispensable duty of parliament to ease the gentry and people of *Great Britain* by *TAXING* the colonists without their consent?"—and that it was the indispensable duty of the colonists *on constitutional principles* to submit to such taxation? The learned say that the too rigid attention of the mind to one idea sometimes is the cause of madness. So rigid has been the attention of many heads in *Great Britain* to the idea of *dependance*, that it seems to have occasioned a kind of insanity in them; and by ruminating, speech-

* "Absolute dominion, HOWEVER PLACED, is so far from being one kind of civil society, that it is as inconsistent with it, as slavery is with property." *Locke on civil gover.* p. 174.

fare of the people so requiring. A regard for that grand object perpetually animates the con-

speechifying, and enacting about it and about it, they have lost all ideas of justice, humanity, law and constitution, and in short of every quality that used to distinguish men from the rest of this creation, and *Englishmen* from the rest of mankind. But Mr. *Locke*'s understanding, even in the present whirl of the political world, would have preserved him, just and tenacious of his principles. The case he puts, and on which the author of "the controversy" argues, is that of *a submission to the terms of government in a common-wealth*. The question between Great Britain and the colonies, is, *what are the terms of their connexion under all the circumstances of it?*

It is not recollect^d that Mr. *Locke* ever insinuates, that the parliament of Great Britain might bind the people of Ireland by statutes, "in all cases whatsoever." Yet there was in his time a famous dispute concerning the authority of parliament over that kingdom. So far was he from favouring the claim of parliament, that it is hoped, it can clearly be proved, he favoured the other side of the question.

His friend Mr. *Molineux*, in a letter dated March 15, 1697-8, tells him of his intentions to visit him—when he could get loose from business: "But this I cannot hope for till the parliament in *England* rises. I should be glad to know from you when that is expected, for indeed they bear very hard upon us in *Ireland*. How justly they can bind us, *without our consent and representatives*, I leave the author of the two treatises on government to consider"---meaning Mr. *Locke*'s two treatises---one on government---the other on civil government; though they are published also as one treatise, the first book of which is under the first title, and the second book under the second title.

Mr. *Locke*, in his answer, dated April 6, 1698, says, "amongst other things I would be glad to talk with you about, before I die, is that which you suggest at the bottom of the first page of your letter. I am mightily concerned for the place you meant in the question you say you will ask

constitution, and regulates all its movements
—unless unnatural obstructions interfere—

*“ Spiritus intus alit, totamque infusa per artus
“ Mens agitat molem, & magno se corpore miscet.”*

ANOTHER argument for the extravagant power of internal legislation over us remains. It has been urged with great warmth against us, that “*precedents*” shew this power is rightfully vested in parliament.

SUBMISSION to unjust sentences proves not a *right* to pass them. Carelessness or regard for the peace and welfare of the community, may cause the submission. Submission may sometimes be a less evil than opposition, and therefore a duty. In such cases, it is a submission to the *divine authority*, which forbids us to injure our country ; not to the *assumed authority*, on which the unjust sentences were founded. But when submission becomes inconsistent with and destructive of the *public good*, the same veneration

ask the author of the treatise you mention, and wish extremely well to it, and would be very glad to be informed by you what would be best for it, and debate with you the way to compose it : but this cannot be done by letters ; the subject is of too great extent, the views too large and the particulars too many to be so managed. Come therefore yourself, and come as well prepared as you can. But if you talk with others on that point there, mention not me to any body on that subject ; only let you and I try what good we can do for those whom we wish well to ; great things have sometimes been brought about from small beginnings well laid together.”

Mr. Molineux quickly after came over from Ireland to England to see Mr. Locke.

veneration for and duty to the *divine authority*, commands us to oppose. The all wise Creator of man imprest certain laws on his nature. A desire of happiness, and of society, are two of those laws. They were not intended to destroy, but to support each other. Man has therefore a right to *promote* the *best* union of both, in order to enjoy both in the *highest* degree. Thus while this right is properly exercised, desires, that seem *selfish*, by a happy combination, produce the welfare of *others*. “This is removing submission from a foundation unable to support it, and injurious to the honour of God, and fixing it upon much firmer ground *.”

No sensible or good man ever suspected Mr. Hooker of being a *weak* or *factions* person, “yet he plainly enough teacheth, that a society, upon experience of universal evil, *have a right* to try by *another* form to answer more effectually the ends of government”—And Mr. Hoadley asks—“Would the *ends of government* be destroyed should the miserable condition of the people of *France*, WHICH HATH PROCEEDED FROM THE KING’S BEING ABSOLUTE, awaken the thoughts of the wisest heads amongst them; and move them all to exert themselves, so as that those ends should be better answered for the time to come ?

WHAT mind can relish the hardy proposition, that because precedents have been introduced

* HOADLEY’s disc. on government.

troduced by the inattention or timidity of *some*, and the cunning or violence of *others*, THEREFORE the latter have a *right* to make the former miserable—that is, that precedents that ought never to have been set, yet being set, repeal the eternal laws of natural justice, humanity, and equity *.

THE argument from precedents begins unluckily for its advocates. The *first* produced against

*—————“ I could never think
A mortal’s law of power or strength sufficient
To abrogate the unwritten law divine,
Immutable, eternal, not like these
Of yesterday, but made ere time began.”

Sophocles’s Antig. Frank. Transt.

It should be considered, whether it ever was or ever can be the true interest of a kingdom or state to violate the laws of natural justice, equity, and humanity. These laws may be called the laws of GOD. Can they be broken with impunity? The Scriptures are full of lessons on this subject, and history furnishes instances sufficient to alarm oppressors, if they would attend to them. All the glories of *Charles the Bold*,—*Charles the Fifth*,—*Philip the Second*,—*Charles the Twelfth*,—*Lewis the Fourteenth*,—and a numerous list of distinguished princes, were overcast, when unrelenting cruelty came to preside over their resolutions. From *Athens* to *Genoa* the observation holds true. Let not the opinion be condemned as presumptuous, before it be fully enquired into. It is worth an enquiry.

“ *Discite justitiam moniti & non temnere divos.*”

England has been prosperous in many civil wars, but they were in defence of liberty. She never engaged in one against liberty.—Would to Heaven, she would set the world the much wanted example of lenity in government. Mankind might gain by it. The other mode has been sufficiently tried, and proved to be impolitic and ruinous.

against us by the gentleman before mentioned was an act passed by the Commonwealth parliament in 1650 to "punish" *Virginia**, *Barbadoes*, *Antigua*, and *Bermudas*, FOR THEIR FIDELITY TO CHARLES THE SECOND. So ancient is the right of parliament to "punish" Colonists for doing their duty. But the parliament had before overturned church and throne, so that there is an older "precedent" set against these.

THAT parliament sat amidst the ruins that surrounded it, fiercer than *Marius* among those of *Carthage*. Brutal power became an irresistible argument of boundless right. What the style of an *Aristotle* could not prove, the point of a *Cromwell's* sword sufficiently demonstrated. Innocence and Justice sighed and submitted. —What more could they do? The Restoration took place, and a *legal* parliament would not doubt but it had as extensive a right as an *illegal* one. The Revolution succeeded, and with it *methods* for blending together the powers of king and people in a manner before unknown. A new political alembic was fixed on the great principle of resistance, and in it, severe experiments were to be made on every other

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* This loyal, generous colony preserved its principles with such spirit, notwithstanding the oppression above-mentioned, that in January 1659, they threw off all obedience to the parliament, replaced the king's governor, and proclaimed *Charles the Second*, several months before the Restoration in *Europe*.

other principle of the constitution. How the *boldness of ministers and contempt of the people* have increased since that period, not a man the least acquainted with *English history* can be ignorant. The Colonies were in a state of infancy—still in a state of childhood. Not a single statute concerning them is recollected to have been past before the Revolution, but such as related to the regulation of trade. “Precedents” were afterwards made, that, when they grew up, the authority of a *master* might succeed that of a *parent*.

PRECEDENTS, it is apprehended, are no otherwise regarded in the *English laws* than as they establish *certainty FOR THE BENEFIT OF THE PEOPLE*—according to the maxim—“miserable is the servitude when the laws are *uncertain.*” Precedents militating against the welfare or happiness of a people, are inconsistent with the grand original principle on which they ought to be founded. Their supposed sanction increases in proportion to the repetitions of injustice. They must be void. In subjects of dispute between man and man, precedents may be of use, though not founded on the best reason. They cause a certainty, and all may govern themselves accordingly. If they take from an individual one day, they may give to him the next. But precedents to overthrow *principles*, to justify the *perpetual oppression of all*, and to *impair the power of the constitution*, though a cloud of

them appear, have no more force than the volumes of dust that surround a triumphal car. They may obscure it: they cannot stop it. What would the liberties of the people of *England* have been at this time, if precedents could have made laws inconsistent with the constitution? Precedents, tending to make men unhappy, can with propriety of character be quoted only by those beings to whom the misery of men is a delight.

“ If the usage had been immemorial and uniform, and ten thousand instances could have been produced, it would not have been sufficient; because the practice must likewise be agreeable to the *principles of the law** , in order to be good: whereas this is a practice inconsistent with, and in direct opposition to, the *first and clearest principles of the law*† —to those *feelings of humanity*, out of which mankind will not be reasoned, when power advances with gigantic strides threatening dissolution to a state—to those *inherent though latent powers of society*, which no *climate*‡, no *time*, no *constitution*, no *contract*, can ever destroy or diminish|| .”

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* This is a maxim of law, that—“ a bad usage ought to be abolished.”

† Letter on general warrants.—

‡ 1 Blackstone, p. 245.

|| EQUAL DISTRIBUTION OF JUSTICE, and FREE ENJOYMENT OF PROPERTY, are the great objects of society; and

A PARLIAMENTARY power of *internal legislation* over these colonies, appears therefore to us, equally contradictory to humanity and the constitution, and illegal.

As to the second head, a power of regulating our trade, our opinion is, that it is legally vested in parliament, not as a supreme legislature over these colonies, but as the supreme legislature and full *representative* of the parent state, and the only judge between her and her children in commercial interests, which the nature of the case, in the progress of their growth, admitted. It has been urged with great vehemence against us, and seems to be thought their *fort* by our adversaries, “ that a power of regulation is a power of legislation, and a power of legislation, if constitutional, must be

and no time, precedent, statute, or institution, should deter men from keeping these **UPPERMOST** in their thoughts.”

Mr. Hume's hist. of England.

“ The jurisdiction of the star chamber, martial law, imprisonment by warrants from the privy council, and other practices of a like nature, though *established for several centuries*, were scarce ever allowed by the *English* to be parts of their constitution: THE AFFECTION OF THE NATION FOR LIBERTY STILL PREVAILED OVER ALL PRECEDENT, AND OVER ALL POLITICAL REASONING: The exercise of these powers, after being long the source of secret murmurs among the people, was, in fulness of time, solemnly abolished, as illegal, at least as oppressive, by the whole legislative authority.” id. To these instances may be added, the late practice of general warrants, that had the sanction of precedents, even since the Revolution.

be universal and supreme in the utmost sense of the words. It is therefore concluded, that the colonists, by acknowledging the power of regulation, have acknowledged every other power. On this objection we observe, that according to a maxim of law, "it is deceitful and dangerous to deal in general propositions." The freedom and happiness of states depend not on * *artful arguments*, but on *a few plain principles*. The plausible appearance of the ob-

* Our chance of success would be slight indeed, if it depended on subtleties of reasoning. Who can resist the skilful and courageous attacks of those *Britons*, who have not long since distinguished themselves in the polemical fields? Have they not *proved* to the satisfaction of thousands, the non-existence of matter—the necessity of human actions—consequently the innocence of them—the comfortable mortality of the soul—that virtue is a name—vice a jest—liberty a non-entity—christianity an imposture—and, with due detestation be it mentioned, that we have *no idea of power*, nor of any *Being* endowed with any power, MUCH LESS of one endowed with infinite power?

With explosions of learning and flashes of wit, these well trained troops would keep up a terrible fire of artillery and small arms against us undisciplined *Americans*. We must not meet them in the shock of battle. THAT WOULD BE MADNESS IN THE EXTREME. We must make the most of our *natural* advantages.—*There we are safe*; and all the forces that can be brought to the assault, will never be able to prevail against us. To drop the metaphor. “Inquiry ceases to be rational, and becomes both whimsical and pernicious, when it advances as far as some late authors have carried it, to controvert the first principles of knowledge, morality, religion, and consequently the fundamental laws of the *British* government, and of all well regulated society.”

Mr. Beattie on truth.

It

objection consists in a confused comprehension of several points, entirely distinct in their nature, and leading to consequences directly opposite to each other. There was a time, when *England* had no colonies. Trade was the object she attended to, in encouraging them. A love of freedom was manifestly the chief motive of the adventurers. The connexion of colonies with their parent state may be called a new object of the *English* laws. That her right extinguishes all their rights,—rights essential to freedom, and which they would have enjoyed, by remaining in their parent state, is offensive to reason, humanity, and the constitution of that state. Colonies could not have been planted on *these* terms. What *Englishman*, but an ideot, would have become a colonist on these conditions? to mention no more particulars, “That every shilling he gained, might rightfully be taken from him—trial by jury abolished—the building houses, or making cloths with the materials found or raised in the colonies, prohibited—and armed men set over him to govern him in every action?”

HAD.

It has been asserted by some men distinguished as historians, that the zeal of the reformers in religion engaging them to think liberally on that subject, led them to think with like freedom in civil affairs, whereby the government of *England* received its greatest improvement. If the sentiment is just, may it not be inferred, that contempt for religion, must necessarily introduce an indifference for all the just rules of government and the principles of the constitution?

HAD these provinces never been settled—had all the inhabitants of them now living, been born in *England*, and resident there, they would now enjoy the rights of *Englishmen*, that is, they would be free *in that kingdom*. We claim *in the colonies* these and no other rights. There no other kingdom or state interferes. But their trade, however important it may be, as the affairs of mankind are circumstanced, turns on other principles. All the power of parliament cannot regulate *that* at their pleasure. It must be regulated not by parliament alone, but by treaties and alliances formed by the king WITHOUT THE CONSENT OF THE NATION, with other states and kingdoms. The freedom of a people consists in being governed by laws, in which no alteration can be made, without their consent. Yet the wholesome force of these laws is confined to the limits of their own country. That is, a supreme legislature to a people, which acts internally over that people, and inevitably implies personal assent, representation, or slavery. When an universal empire is established, and not till then, can regulations of trade properly be called acts of supreme legislature. It seems from many authorities, as if almost the whole power of regulating the trade of *England* was originally vested in the crown. One restriction appears to have been, that no duty could be imposed without the consent of parliament. Trade was little regarded by our warlike ancestors. As commerce became of

P more

more importance, duties and severities were judged necessary additions to its first simple state, parliament more and more interfered. The constitution was always free, but not always exactly in the same manner. “ By the Feodal law, all *navigable* rivers and *havens* were computed among the regalia, and were subject to the sovereign of the state. And in *England* it hath always been held, that the king is lord of the whole shore, and particularly is guardian of the ports and havens, which are the inlets and gates of the realm : and therefore, so early as the reign of king John, we find ships seized by the king’s officers, for putting in at a place that was not a legal port. These legal ports were undoubtedly at first assigned by the crown ; since to each of them a court of portmote is incident, the jurisdiction of which must flow from the royal authority. The erection of beacons, lighthouses, and sea marks is also a branch of the royal prerogative. The king may injoin any man from going abroad, or command any man to return. The powers of establishing public marts, regulating of weights and measures, and the giving authority to, or making current, *money*, *the medium of commerce*, belong to the crown. By making peace or war, leagues and treaties, the king may open or stop trade as he pleases. The admiralty courts are grounded on the necessity of supporting a jurisdiction so extensive, though opposite to the usual doctrines of the common law. The laws

laws of Oleron were made by *Richard the First*, and are still used in those courts." In the "Mare causum" are several regulations made by kings*. Time forbids a more exact en-

P 2 quiry

* The power of regulating trade was carried so far by the crown, as sometimes to impose duties; and queen *Elizabeth* obtained several judgments in the exchequer on such regulations. Lord chief justice *Coke* answers the argument founded on these—in 2 inst. 62, 63. Princes aimed at too much power—exceeded due bounds—their imprudence produced "grievances"—and the people, who always suffer when their rulers are weak or wicked, would no longer trust such opportunities of oppression in their hand. The power of impressing seamen shews the extensive authority in naval affairs trusted to "the crown."

1 Blackst. 419. Foster's rep. 154.

So extremely averse were the *English* to foreign affairs, and to the exercise even of parliamentary authority concerning them, that though the nation was justly provoked against the *French* king for the injury done to *Edward the 1st* by withholding *Acquitaine* and his other inheritances in manner (as lord chief justice *Coke* observes in his 2d. inst. p. 532.) and by some cruel actions of *Frenchmen* against *Englishmen*, and had in full parliament granted him aids, subsidies, for the maintenance of his wars in foreign parts, yet in the CONFIRMATIONES CHARTARUM, Ed. 1st. therein taking notice, "that many men doubted, whether these grants by parliament might not turn in servage of them and their heirs, as precedents, expressly declares in those statutes, that such grants shall not be drawn into custom." The comment says—"it was holden that the subjects of the realm ought not to contribute to the maintenance of the king's wars out of the realm—but this matter was never in quiet, until it was more particularly explained by divers acts of parliament." The comment then mentions several acts declaring that no *Englishman* should be bound to contribute to the king's wars out of England, in Scotland, Gascoigny, Ireland, Calais (though these three last were countries dependent on England)

quiry into this point : but such it is apprehended will on enquiry be found to have been the power of the crown, that our argument may gain,

England) and says, “ these acts of parliament are but declarations of the antient law of *England*.—But here may be observed, that when any antient law or custom of parliament” (such as before mentioned by making acts relating to foreign wars] “ is broken, and the crown possessed of a precedent, how difficult a thing it is, TO RESTORE THE SUBJECT AGAIN TO HIS FORMER FREEDOM AND SAFETY.” 2 inst. 527—529.

The author of “ the controversy,” who with a liberality of sentiment becoming a pleader against freedom and the best interest of mankind, counts “ statute books”—“ ministers”—“ king’s council”—p. 77, 78.—“ scraps of journals”—p. 81. and ordinances of “ the rump parliament”—p. 87. among his “ DEITIES” p. 78 ; and grieves that we poor “ *infidel*” colonists will not pay his idols the veneration his zeal judges due to them, has collected a good many fragments of proceedings in the House of Commons from the year 1614 to 1628. The amount is this, that the ministers of the crown insisted, that parliament could not make laws for *America*; that the commons doubted; but at length in 1724, came to an opinion, that the king’s patent for “ a monopoly of fishing on the coasts of *America* was a grievance,”---that a “ clause of FORFEITURE” against those who interfered in the fishery was void---and past a bill “ for a free liberty of fishing,” &c. It appears in the debates that the fishery was free *before the patent was granted*.---These extracts do not shew what became of the bill in the House of Lords. One Mr. *Brooke* said in 1621. “ We may make laws here for *Virginia*, for if the king gives consent to this bill past here and by the lords, this will controul the patent.”

It seems, as if the notion of the king’s regulating power still prevailed, but, that “ a clause of *forfeiture*” in such regulations was void. So much had the power of parliament grown since king *John*’s reign. Nor does it appear to have been unreasonable, as commerce became of more consequence. The instance here mentioned, related

gain, but cannot lose. We will proceed on a concession, that the power of regulating trade is vested in parliament.

COMMERCE rests on concessions and restrictions mutually stipulated between the different powers of the world * ; and if these colonies were sovereign states, they would in all probability be restricted to their present portion †. The people of *England* were *free-men*,

lated to a regulation of trade; and however the king might have accommodated the point, with the other branches of the legislature, the whole proceeding is immaterial. If it was a right actually enjoyed by *Englishmen* to fish on the coasts of a plantation---and a grant by the crown of the fishery to the people of the plantation excluding the people of *England*, could not *divest them* of their right---or, "if by the king's giving his consent to a bill passed by lords and commons"---"the patent might be controuled"---it does not follow, that the king, lords and commons could *divest* the people of the plantations of all *their* rights.

* Case of the *Ostend East India company*.

† "Another light, in which the laws of *England* consider the king with regard to domestic concerns, is the arbiter of commerce. By commerce, I at present mean domestic commerce only. It would lead me into too large a field, if I were to attempt to enter upon the nature of *foreign trade*, its privileges, regulations, and restrictions; and would be also quite beside the purpose of these commentaries, which are confined to the laws of *England*. Whereas no *municipal laws* can be sufficient to order and determine the very extensive and complicated affairs of traffic and merchandize; neither can they have a proper authority for this purpose. For, as these are transactions carried on between subjects of independent states, the municipal laws of one will not be regarded by the other. For which reason the affairs of commerce are regulated by a law of their

men, before they were *merchants*. Whether they will continue *free*, they *themselves* must determine. *How they shall trade*, must be determined by *Germans, French, Spaniards, Italians, Turks, Moors, &c.* The right of acquiring property depends on the rights of *others*: the right of *acquired* property, solely on the owner. The possessor is no owner without it. “Almost every leaf and page of *all* the volumes of the common law prove this right of property *.” Why should this right be sacred in *Great Britain*, “the chief corner stone” in the solid foundation of her constitution, and an empty name in her colonies? The lamb that presumed to drink in the *same stream* with a stronger animal, *though lower down the current*, could not refute the charge of incommoding the latter, by disturbing the water. Such power have reasons that appear despicable and detestable at first when they are properly enforced.

FROM this very principle arose her power; and can that power now be justly exerted, in suppression of that principle? It cannot. Therefore,

their own, called the law merchant or *lex mercatoria*, which all nations agree in and take notice of. And in particular it is held to be part of the law of *England*, which decides the causes of merchants by the general rules which obtain in all commercial countries; and that often even in matters relating to domestic trade, as for instance with regard to the drawing, the acceptance, and the transfer of inland bills of exchange.”

* Parlia. hist.

fore, a power * of regulating our trade involves not in it the idea of supreme legislature over

* This distinction between a supreme legislature and a power of regulating trade, is not a new one. We find it clearly made, by the judges of *England*, at a period, when the modern profitable mode of blending together in parliament the authorities of the crown and people, had not extinguished all reverence for the principles of the constitution.

By the statute of the 2d of *Henry 6th ch. 4th Calais* was confirmed a staple place for the wool exported from *England, Wales and Ireland*. Some wool shipped from this last kingdom, was consigned to *Sluice* in *Flanders*. The ship by stress of weather was forced into *Calais*, where the wool was seized as forfeited. The chief question in the exchequer chamber was, whether the statute bound *Ireland*. In Rich. 3, 12, the case is thus reported “*Et ibi quoad ad primam questionem dicebant, quod terra Hiberniae inter se habet parliamentum & omnimodo curias prout Anglia, & per idem parliamentum faciunt leges & mutant leges, & NON OBLIGANTUR PER STATUTA IN ANGLIA, QUIA NON HIC HABENT MILITES PARLIAMENTI; sed hoc intelligitur DE TERRIS per REEUS IN TERRIS TANTUM EFFICIEND; sed PERSONÆ EORUM SUNT SUBJECTI REGIS, et tanquam subjecti ERUNT obligati ad aliquam rem EXTRA TERRAM ILLAM FACIENDAM contra statutum, sicut habitantes in Calesia, Gasconia, Guien, &c. dum fuere subjecti; & obedientes erunt SUB ADMIRALITATE ANGLIÆ DE RE FACTA SUPER AL- TUM MARE; et similiter breve de errore de judiciis redditis in Hibernia in banco regis hic in Anglia.*”

Brooke, lord chief justice of the common pleas, mentions the case almost in the same words, title parliament 98—but says—“the chief justice was of opinion, that the statutes of *England* shall bind *Ireland*, which was in a manner agreed by the other justices; and yet it was denied the former day: YET note, that *Ireland* is a realm of itself, and has a parliament in itself.”

Here it may be observed, first, that the reason assigned by the judges, why the statutes of *England* bind not the people

over us. The first is a power of a preserving
“protecting” nature. The last, as applied
to

people of *Ireland*, though *specially named*, contains a constitutional principle, the *sine qua* of freedom. *Secondly*, that the people of *Ireland*, as subjects of the king, were “under the admiralty of *England* as to things done on the high sea;” which is a strong confirmation given by the judges of *England*, to the supposition before made, of the power of regulating trade being formerly vested in the king. *Thirdly*, that the opinion of the chief justice, and of the other justices, such as it was, “reddendo singula singulis, & secundum subjectam materiam,” proves at most, only that *Ireland* was bound by *statutes regulating their trade*, for such was the 2 *Henry 6th ch. 4th* on which the case arose. *Fourthly*, that *Brooke*, a man of great eminence and dignity in the law, appears by his note, to have been dissatisfied with the judgment, though only on a statute of regulation, for this reason of such weight with an *Englishman*—“because *Ireland* is a realm of itself and has a parliament within itself.” *Fifthly*, that the authority of the crown, including the regulation of the trade of *Ireland*, and sending writs of error there, were sufficient restraints, to secure the obedience and subordination of that kingdom. This reason seems to have held its ground, till lord chief justice *Coke’s* time; and though a great reverence is entertained for his memory, yet it can never be acknowledged, that an “*obiter dictum*” of his, or of any other man, is a rule of law. In *Calvin’s* case, the chief justice reciting the foregoing case, says, “*Hibernia* habet parliamentum, & faciunt leges, & nostra statuta non legant eos, *QUIA* non mittunt milites ad parliamentum (which “adds he,” is to be understood, unless they be *especially named*.) And does the “*especially naming them*” give them a representation, or remove the injustice of binding them without it? This observation in plain English would run thus: “Our statutes do not bind the people of *Ireland*, when we *do not intend* to bind them, *BECAUSE*, they are not represented in our parliament; but our statutes bind them, when we *intend* to bind them.” What is this but saying—“that to speak of their not being represented, is a mere jargon;

to America, is such a power as Mr. Justice Blackstone describes in these words, “whose

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jargon; and the sole point is, whether it is our *will* to bind them”—or in other words—“ that our statutes do not bind them, for a reason as strong as man can give, and so acknowledged by us to be, which yet is no reason at all: for, where there is no occasion for its operation, it applies not; and where there is occasion, it is of no force.” His Lordship had just before taken notice that “ a writ of *error* did lie in the king’s bench of *England* of an erroneous judgment in the king’s bench of *Ireland*;” and perhaps that led him in the course of his argument to imagine, there might be a like pre-eminence of the parliament of *England* over that of *Ireland*. That this was his reason seems certain, because at a meeting of commissioners to consider of a projected union between *England* and *Scotland*, at which the chief justice was present—Moor 796, it is said, “ that parliament has power over *Ireland*, AS IS PROVED by that a writ of error may be brought of a judgment in the king’s bench of *Ireland*.” In the 4th inst. he also says the people of *Guernsey*, *Jersey* and *Man* are not bound by the statutes of *England*, unless they are specially named. Yet whoever examines the statutes relating to *Ireland*, *Guernsey*, *Jersey* and *Man*, will have very little cause to believe, that it has been thought in *England*, that statutes would generally bind the people of those countries, notwithstanding the subjection of *Ireland*, and the other islands, the many distresses of the former, and the weakness of the latter have afforded opportunities of extending such a power over them. With respect to all these places scarce a statute can be found of *any* period, but for the regulation of their trade. The same observation may be made as to *Gascoigny*, *Guienne*, and *Calais*. Justice *Wylde*, in 2 *vent* 5, said, “ he had seen a charter whereby these places were recited to be united to *England* by mutual paet. And writs of error run those.” “ *Wales* was a conquered country, and the people submitted to *Edward the First de alto et basso*.”

Whatever pretence the chief justice’s opinion was founded on, it has been carefully repeated in many law books since. Whether his lordship meant, that statutes of *England* could bind the people of *Ireland*, in taking away trials

by

enormous weight spreads horror and destruction on all inferior movements." The first

is

by jury,—taxing them, and " *in all cases whatsoever*," or only in preserving their subordination, as by regulating their trade, which was the case referred to in his comment, does not appear. The parliament, in declaring the dependence of *Ireland*, did not *venture* to claim a power of binding the people of that kingdom " *in all cases whatsoever*."* With respect to all these declarations, however, as they are made to refer to us, we may answer as the lion did to the man in the fable.

Much the same arbitrary construction has been made on the question, whether a man could be tried in *England* on a charge of committing treason in *Ireland*. In queen Elizabeth's reign, " *Gerrade*, chancellor of *Ireland*, moved that question to the counsel of the queen, and it was held by *Wray*, *Dier*, and *Gerrarde*, attorney general, he could not, because he was a subject of *Ireland* and not of *England*, and if tried in *England*, he could not be tried by his peers." *Dier*, 360. Afterwards, to gratify the queen's resentment against some rebels, they were tried in *England*; and thus passion and complaisance made very good law against reason and justice.

Having mentioned *Calvin's* case, it may not be improper to observe, that if the author of " the controversy" had taken the trouble of reading it, he might have found his perplexities removed on the question that has given him so much anxiety, and brought such a load of reproaches on the colonies. He is provoked at our insolence for pretending to be any thing more than *aliens* in *England*, while we deny the power of parliament to bind us " *in all cases whatever*." In that case, the gentleman would have discovered, that the judges of *England* held, that a man born in *Scotland*, under the allegiance of James the First, after his accession to the throne of *England*, was entitled to all the rights of a subject born in *England*; though the objection, that statutes of *England* could not bind *Scotland*, or a man residing there, who held lands in *England*, was mentioned in the course of the

argu-

* Nor, to this day does parliament tax them, &c. And therefore the inference is just, that neither they nor the chief justice meant such a power.

is a power subject to a constitutional check. *Great Britain* cannot injure us by taking away our commerce without hurting herself *immediately*. The last is a power without check or limit. She might ruin us by it. The injury thereby to herself might be *remote* as to be despised by her.

THE power of regulation was the only band that could have held us together ; formed on one of these “ original contracts,”—which only can be a foundation of just authority. Without such a band, our general commerce with *foreign nations*, might have been injurious and destructive to her. Reason and duty reject such a licence. This our duty resembles that of children to a parent. The parent has a power over them : but they have rights, what the parent cannot take away. Heaven grant that our mother country may regard us as her children, that if, by the dispensation of Providence, the time shall come, when her

Q 2 . power

argument. The great difficulty being got over, if the gentleman will go a step farther, and perceive some little distinction between colonies proceeding out of the loins of *England*, and the “ *conquered*” countries of *Ireland* and *Wales*,—the countries of *Gascigny*, *Guienne*, and *Calais*, “ *united by mutual pact to England*,” and the islands of *Guernsey*, &c. “ *lying within the four seas, whose sovereigns annexed them to England* :” and will only allow the colonists a little more regard than is profest in law books for those countries, and about as much as has been *actually observed* towards them by parliament, he will have no further occasion to say severe things of those who are willing to esteem him ; and then, if he can persuade his worthy countrymen to adopt his sentiments, their anger will no longer give pain to those who almost adore them.

power increases the memory of former kindnesses, may supply its decays, and her colonies, like dutiful children, may serve and guard their aged parent, for ever revering the arms that held them in their infancy, and the breasts that supported their lives, while they were little ones.

IT seems, as if the power of regulation might not inaptly be compared to the prerogative of making peace, war, treaties, or alliances, whereby “*the whole* nation are bound AGAINST THEIR CONSENT:*” and yet the prerogative by no means implies a *supreme legislature*. The language held in “*the Commentaries*” on this point is very remarkable. “With regard to FOREIGN CONCERNS the king is the *delegate* or *representative* of the people; and in him, as in a *center*, all the *rays* of his people are united †; and the SOVEREIGN POWER *quoad hoc* is vested in his person ‡.” Will any *Englishman* say these expressions are descriptive of the king’s authority, WITHIN THE REALM? “Is the SOVEREIGN POWER *within that* vested in his person? He is styled “*sovereign*” indeed; “his realm is declared by many acts of parliament an *empire*, and his crown *imperial*.” But do these splendid appellations, the highest known in *Europe*, signify, that “*sovereign* POWER is vested in his person *within the realm?*” We have a full answer in the *Commentaries*. “The meaning of the legislature, when it uses these terms

* 1 Blackst. 252, 257. † Fol. 252. ‡ Fol. 257.

terms of *empire* and *imperial*, and *applies them* to the realm and crown of *England*, is *only to assert*, that our king is equally *sovereign* and *independent* within these his dominions; and *owes no kind of subjection* to any potentate upon earth. Thus we maintain, that with regard to FOREIGN AFFAIRS, the parent original state “*is the delegate or representative*” of the entire dominions, “*the sovereign power QUO AD HOC is vested*” in her. Her acts under this power “*irrevocably bind the whole nation.*” But yet this power by no means implies *a supreme legislature*.

THE exercise of this power *by statutes* was absolutely necessary; because it was, and could only be lodged, as the laws of the parent state stand in the supreme legislature of that state, consisting of king, lords, and commons; and *statutes* are the modes by which these united sentiments and resolutions are express. It is universally acknowledged in *Great Britain*, that it infers no power of *taxation* in king and lords, that their *limited authority* is used in cloathing, *gifts and grants of the commons* with the *forms of law*—nor does it infer *supreme legislature* over us, that the *limited authority* of king, lords, and commons is used in cloathing *regulations of trade* with the *form of law*. The commons joining in the law, is not material. The difference is only in the mode of assent. Theirs is *express*, ours is *implied*, as the assent of the “whole nation” is, in the preceeding instances.

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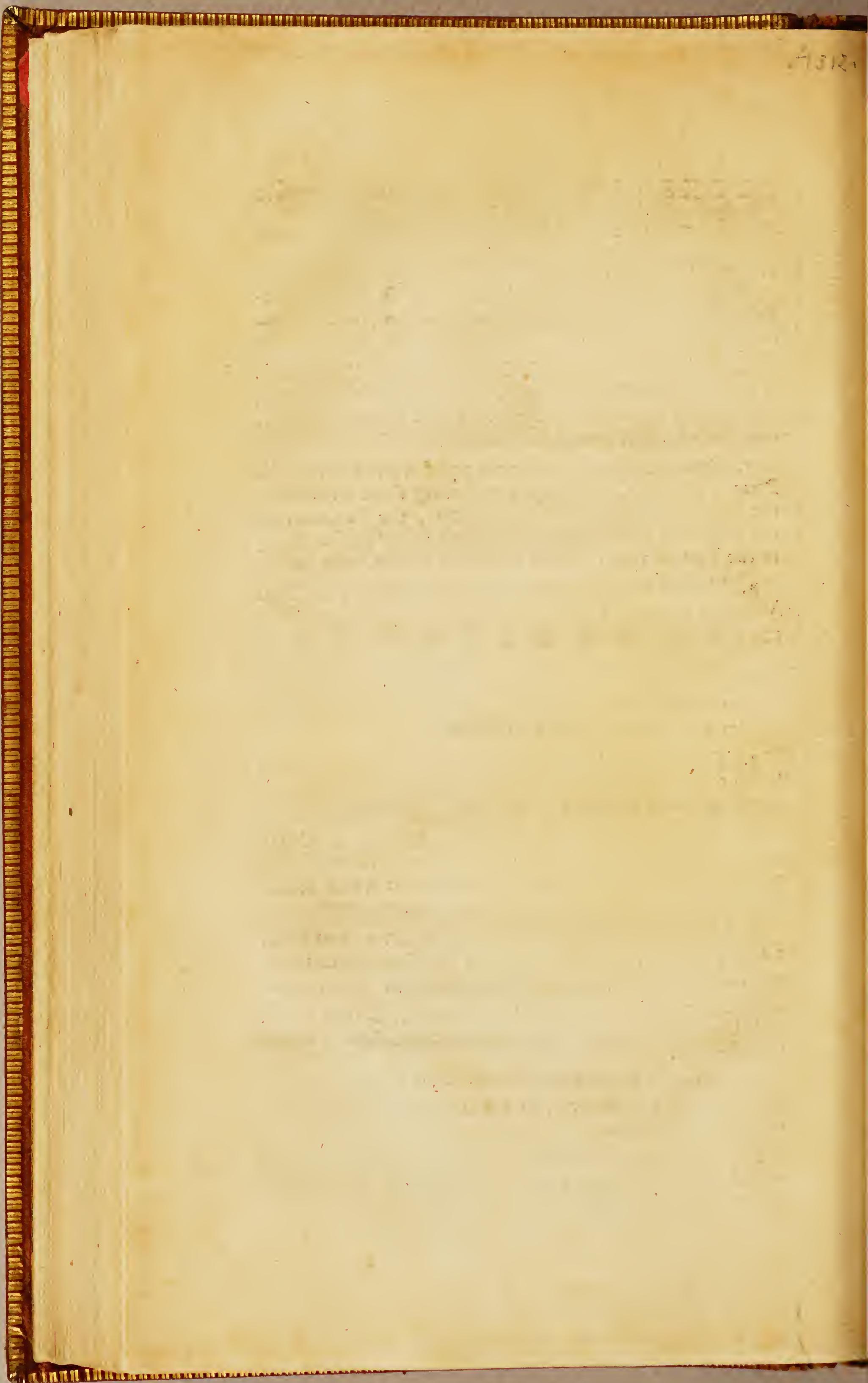
THIS power of regulation appears to us to have been pure in its principle, simple in its operation, and salutary in its effects. But for some time past we have observed, with pain, that it hath been turned to other purposes, than it was originally designed for, and retaining its title, hath become an engine of intolerable oppressions and grievous taxations. The argument of an eminent judge states the point in a similar case strongly for us, in these words.—“ Though it be granted, that the king hath the *custody* of the *bavens* and *ports* of this island, being the very *gates* of this kingdom, and is *trusted* with the *keys* of these *gates*; yet the *inference* and *argument* there-upon made, I utterly deny. For in it there is *mutatio hypothesis*, and a *transition* from a thing of *one* nature to *another*; as the *premises* are of a *power only fiduciary*, and in *point of trust and government*, and the *conclusion* infers a *right of interest and gain*. Admit the king has *custodiam portuum*, yet he hath but the *custody*, which is a *trust* and not *dominium utile*. He hath power to *open* and *shut*, UPON CONSIDERATION OF PUBLIC GOOD TO THE PEOPLE AND STATE, but not to make *gain* and *be-nefit* by it: the *one* is PROTECTION, the *other* is EXPIRATION.” By common law the king may restrain a subject from going abroad, or enjoin him by his chancellor from proceeding at law: But to *conclude*, that he may therefore *take money*, not to restrain or not to enjoin, is TO SELL GOVERNMENT, TRUST, AND COMMON JUSTICE *.

* Rights of the people, as to impositions.

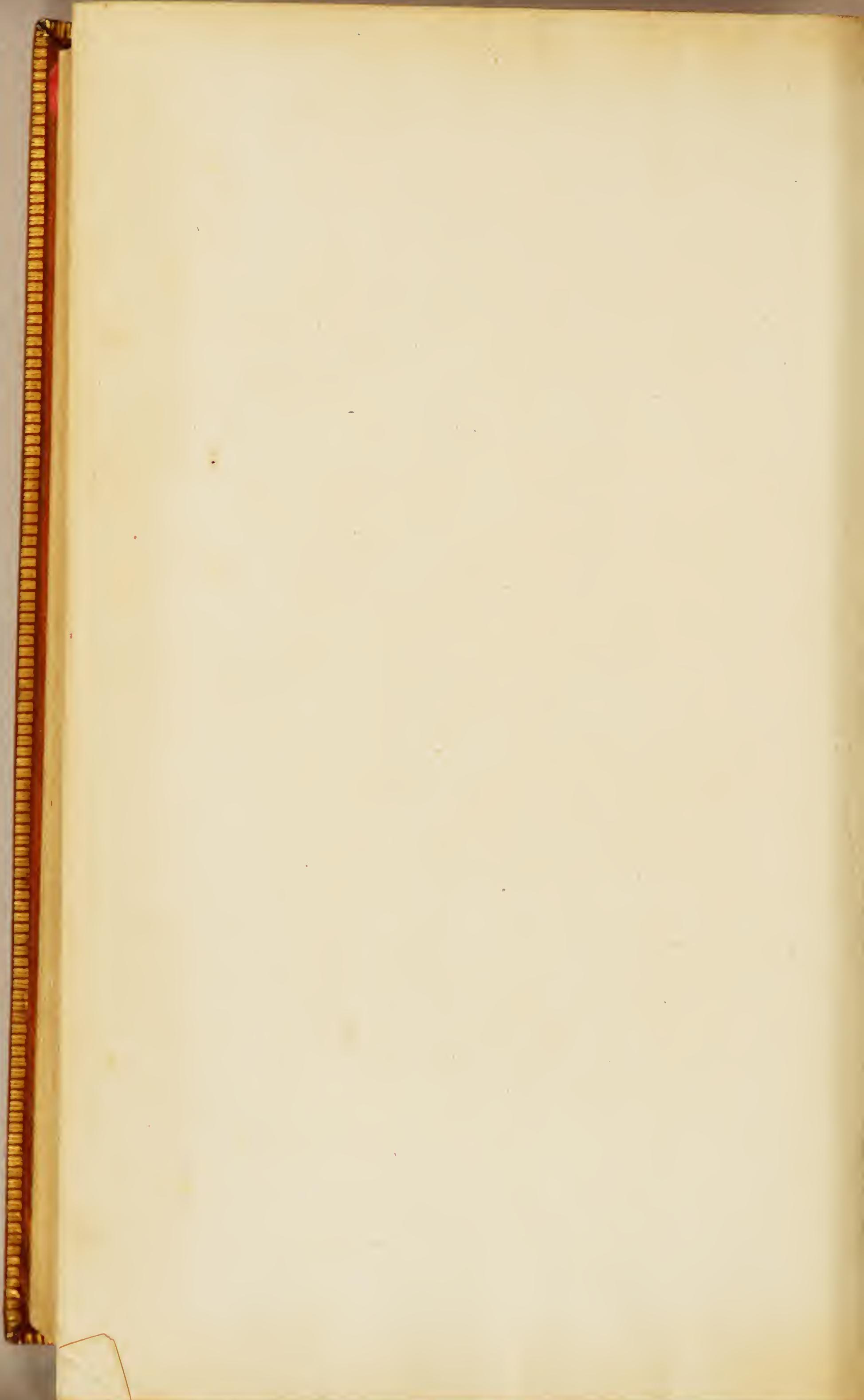
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